

**Fill in this information to identify the case:**

Debtor 1 Fresh Acquisitions, LLC

Debtor 2 \_\_\_\_\_  
(Spouse, if filing)

United States Bankruptcy Court for the: Northern District of Texas, Dallas Division

Case number 21-30721-11

E-Filed on 08/02/2021  
Claim # 263

# Official Form 410

## Proof of Claim

04/19

**Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.**

**Filers must leave out or redact** information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

**Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.**

### Part 1: Identify the Claim

1. **Who is the current creditor?** WFC WYOMING NM, LLC  
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. <b>Where should notices and payments to the creditor be sent?</b> Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b>	<b>Where should payments to the creditor be sent? (if different)</b>
	<u>Tim Chung, Westwood Financial</u> Name	_____ Name
	<u>11440 San Vicente Blvd, 2nd Floor</u> Number Street	_____ Number Street
	<u>Los Angeles CA 90049</u> City State ZIP Code	_____ City State ZIP Code
	Contact phone <u>(323) 986-4272</u>	Contact phone _____
	Contact email <u>tchung@westfin.com</u>	Contact email _____
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_

**Part 2:** Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_\_

7. **How much is the claim?** \$ 463,265.96. **Does this amount include interest or other charges?**  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?** Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.  
Lease; rent and other charges-see attached

9. **Is all or part of the claim secured?**  No  
 Yes. The claim is secured by a lien on property.  
**Nature of property:**  
 Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amounts should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

10. **Is this claim based on a lease?**  No  
 Yes. **Amount necessary to cure any default as of the date of the petition.** \$ 237,980.72

11. **Is this claim subject to a right of setoff?**  No  
 Yes. Identify the property: \_\_\_\_\_

**12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

No

Yes. Check one:

Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Up to \$3,025\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

Wages, salaries, or commissions (up to \$13,650\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

Other. Specify subsection of 11 U.S.C. § 507(a)(    ) that applies.

**Amount entitled to priority**

\$                      0.00

\$                      0.00

\$                      0.00

\$                      0.00

\$                      0.00

\$                      0.00

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

**Part 3: Sign Below**

**The person completing this proof of claim must sign and date it. FRBP 9011(b).**

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

**A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.**

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 08/02/2021  
MM / DD / YYYY

/s/Tim Chung  
Signature

**Print the name of the person who is completing and signing this claim:**

Name Tim Chung  
First name Middle name Last name

Title Attorney & Agent for Claimant

Company Westwood Financial  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_  
Number Street

City State ZIP Code

Contact phone \_\_\_\_\_ Email \_\_\_\_\_

Attachment 1 - Proof of Claim - Fresh Acquisitions\_for filing.pdf

Description -

**Fill in this information to identify the case:**

Debtor 1 Fresh Acquisitions, LLC

Debtor 2 \_\_\_\_\_  
(Spouse, if filing)

United States Bankruptcy Court for the: Northern District of Texas

Case number 21-30721-hdh

# Official Form 410

## Proof of Claim

12/15

**Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.**

**Filers must leave out or redact** information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

**Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.**

**Part 1:** Identify the Claim

1. **Who is the current creditor?** WFC WYOMING NM, LLC  
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. <b>Where should notices and payments to the creditor be sent?</b>  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b>	<b>Where should payments to the creditor be sent? (if different)</b>
	<u>Tim Chung, Westwood Financial</u> Name <u>11440 San Vicente Blvd, 2nd Floor</u> Number Street <u>Los Angeles CA 90049</u> City State ZIP Code Contact phone <u>323.986.4272</u> Contact email <u>tchung@westfin.com</u>	_____ Name _____ Number Street _____ City State ZIP Code Contact phone _____ Contact email _____
Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____		

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_

**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. **Do you have any number you use to identify the debtor?**  No  Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor:   1  1  5  

7. **How much is the claim?** \$                     463,265.96                     **Does this amount include interest or other charges?**  
 No  Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?** Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.  
  
Lease; rent and other charges -- see attached

9. **Is all or part of the claim secured?**  No  Yes. The claim is secured by a lien on property.  
**Nature of property:**  
 Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amounts should match the amount in line 7.)  
  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  Variable

10. **Is this claim based on a lease?**  No  Yes. **Amount necessary to cure any default as of the date of the petition.** \$                     237,980.72                    

11. **Is this claim subject to a right of setoff?**  No  Yes. Identify the property: \_\_\_\_\_

**12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

No

Yes. Check all that apply:

**Amount entitled to priority**

Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). \$ \_\_\_\_\_

Up to \$2,775\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). \$ \_\_\_\_\_

Wages, salaries, or commissions (up to \$12,475\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). \$ \_\_\_\_\_

Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). \$ \_\_\_\_\_

Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). \$ \_\_\_\_\_

Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies. \$ \_\_\_\_\_

\* Amounts are subject to adjustment on 4/01/16 and every 3 years after that for cases begun on or after the date of adjustment.

**Part 3: Sign Below**

**The person completing this proof of claim must sign and date it. FRBP 9011(b).**

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

**A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.**

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 08/02/2021  
MM / DD / YYYY

/s/Tim Chung

Signature

**Print the name of the person who is completing and signing this claim:**

Name Tim Chung  
First name Middle name Last name

Title Attorney & Agent for Claimant

Company Westwood Financial  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 11440 San Vicente Blvd, 2nd Floor  
Number Street

Los Angeles CA 90049  
City State ZIP Code

Contact phone 323.986.4272 Email tchung@westfin.com

**EXHIBIT A**

**TO PROOF OF CLAIM OF**

**WFC WYOMING NM, LLC (“Claimant”)**

**IN THE BANKRUPTCY PROCEEDINGS OF**

**FRESH ACQUISITIONS, LLC (“Debtor”)**

**Case No. 21-30721-hdh**

1. Lease. Claimant is the current Landlord under that certain Lease Contract dated June 23, 1999 (“Lease”), relating to certain premises located at 2004 Wyoming Boulevard, in Albuquerque, NM 87112 (“Premises”). It is believed that the Debtor designated the Premises as Store No. 115. A copy of the Lease, as amended is attached hereto as Exhibits B-1, B-2, B-3, and B-4.

2. Pre-Petition Defaults. Prior to the filing of these bankruptcy proceedings on April 20, 2021 (“Petition Date”), the Debtor committed various defaults under the Lease.

3. Pre-Petition Claim. There are certain unpaid obligations due the Claimant under the Lease, which arose prior to the Petition Date and which are not limited by 11 U.S.C. § 502(b)(6)(A) (“Pre-Petition Claim”). The total amount of the Pre-Petition Claim is \$237,980.72, calculated as follows:

Rent and Charges as of February 28, 2021 ( <u>Exhibit C</u> )	\$206,692.35
Rent and Charges for March 2021 ( <u>Exhibit C</u> )	18,773.77
Prorated Pre-Petition Rent and Charges for April 2021 (66.66% of \$18,773.77 in rent and other monthly charges ( <u>Exhibit C</u> ))	<u>12,514.60</u>
Total	\$237,980.72

4. Lease Rejection. The Lease was rejected effective as of Petition Date, pursuant to that Order entered on April 23, 2021, at Docket No. 65.



5. Rejection Damages. Based on the balance due Claimant under the Lease and subject to the limitations set forth in 11 U.S.C. § 502(b)(6)(A), the Debtor and its estate are indebted to the Claimant for damages arising from the rejection of the Lease in the amount of \$225,285.24, as described in Exhibit D hereto and in Paragraph 6 below.

6. Summary of Claim. The following is the summary of the Claimant's Claim against the Debtor and its estate, pursuant to 11 U.S.C. § 502(b)(6):

A.	Post-Petition Rental Obligations Under Lease	
	Base Rent	Exhibit D
	CAM	Exhibit D
	Insurance	Exhibit D
	Taxes	Exhibit D
	Remaining Post-Petition Rental Obligations Before Mitigation	\$344,185.16
B.	Reduction for Mitigation (see Paragraph 6 above)	<0>
C.	Total Remaining Obligations After Mitigation	\$344,185.16
D.	Fifteen Percent (15%) of Total Remaining Obligations Before Mitigation (Exhibit D)	\$51,627.77
E.	Three (3) Years of Rent/Taxes (if less than 15% of remaining obligations)	N/A
F.	One (1) Year of Rent/Taxes/CAM/Insurance (Exhibit D)	\$225,285.24
G.	Maximum Damages Allowed Under 11 U.S.C. § 502(b)(6)(A)	\$225,285.24
H.	Unpaid Claim Under 11 U.S.C. § 502(b)(6)(B)	\$237,980.72
I.	<b>TOTAL CLAIM</b>	<b>\$463,265.96</b>

# **EXHIBIT B-1**

TO LEASE CONTRACT  
BY AND BETWEEN

WEINGARTEN REALTY INVESTORS  
AS "LANDLORD"

AND

CAFETERIA OPERATORS, L.P.  
AS "TENANT"

Wyoming Mall Shopping Center (Location 0179)

<u>ARTICLE</u>	<u>CAPTION</u>	<u>PAGE</u>
ARTICLE I	PREMISES . . . . .	1
ARTICLE II	CONSTRUCTION WORK . . . . .	1
ARTICLE III	TERM . . . . .	1
ARTICLE IV	RENTAL . . . . .	2
ARTICLE V	UTILITIES . . . . .	4
ARTICLE VI	USE . . . . .	5
ARTICLE VII	COMMON AREA . . . . .	6
ARTICLE VIIII	ASSIGNMENT AND SUBLETTING . . . . .	8
ARTICLE IX	REPAIR AND MAINTENANCE . . . . .	9
ARTICLE X	ADDITIONS AND FIXTURES . . . . .	11
ARTICLE XI	FIRE AND DESTRUCTION OF PREMISES . . . . .	12
ARTICLE XII	LIABILITY AND INDEMNITY . . . . .	13
ARTICLE XIII	DIVERSION OF SALES . . . . .	15
ARTICLE XIV	SECURITY DEPOSIT . . . . .	16
ARTICLE XV	LANDLORD'S LIEN . . . . .	16
ARTICLE XVI	DEFAULT, REMEDIES AND DETERMINATION OF DAMAGES . . . . .	17
ARTICLE XVII	NON-WAIVER . . . . .	20
ARTICLE XVIII	LANDLORD-TENANT RELATION . . . . .	21
ARTICLE XIX	EMINENT DOMAIN . . . . .	21
ARTICLE XX	HOLDING OVER . . . . .	22
ARTICLE XXI	LANDLORD'S MORTGAGEE . . . . .	23
ARTICLE XXII	ADDITIONAL RENT . . . . .	24
ARTICLE XXIII	NOTICE . . . . .	28
ARTICLE XXIV	TENANT'S SIGNS . . . . .	28
ARTICLE XXV	TERMINOLOGY AND MISCELLANEOUS . . . . .	28
ARTICLE XXVI	TENANT'S BANKRUPTCY . . . . .	31
ARTICLE XXVII	EXISTING LEASE . . . . .	32
ARTICLE XXVIII	CONDITION OF LEASE . . . . .	32
ARTICLE XXIX	ENTIRE AGREEMENT . . . . .	32

- EXHIBITS:        "A" - LOCATION OF THE LEASED PREMISES  
                  "B" - LEGAL DESCRIPTION OF THE SHOPPING CENTER  
                  "E" - INSURANCE CERTIFICATE  
                  "X" - SUBORDINATION AGREEMENT

LEASE CONTRACT

THIS LEASE CONTRACT entered into by and between WEINGARTEN REALTY INVESTORS, a Texas real estate investment trust duly organized and operating under the laws of the State of Texas, with principal place of business in Houston, Harris County, Texas, hereinafter called "Landlord"; and CAFETERIA OPERATORS, L.P., hereinafter called "Tenant".

W I T N E S S E T H:

ARTICLE I

Premises

Section 1.01. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord the leased premises (the "Leased Premises") which shall be a portion of a building, which portion contains or will contain approximately 11,402 square feet of floor area, situated or to be situated substantially in the location which is shown outlined or hatched on the plat designated Exhibit "A", which is annexed hereto and incorporated by reference herein and made a part hereof for all purposes, such building to be constructed or being constructed on part of the tract of property described in Exhibit "B", which is annexed hereto and incorporated by reference herein and made a part hereof for all purposes. The land described in Exhibit "B" (and any additional land from time to time designated by Landlord) and any existing and future buildings, parking area, sidewalks, service area and other improvements now existing or hereafter erected thereon are sometimes herein referred to as the "Shopping Center". Landlord reserves the right to place in, under, over or through the Leased Premises pipes, wires, lines, and facilities serving other areas of the Shopping Center provided such right is exercised in a manner which does not unreasonably interfere with Tenant's conduct of its business at the Leased Premises.

Section 1.02. In determining the floor area of the Leased Premises, distances shall be measured from the exterior face of all exterior walls and the center of all partition walls which separate the Leased Premises from any interior area. Walls separating the Leased Premises from a mall and corridor walls shall be deemed to be exterior walls of the Leased Premises.

ARTICLE II

Construction Work

Section 2.01. Tenant is currently occupying the Leased Premises and accepts same on an "AS IS" basis.

ARTICLE III

Term

Section 3.01. The term of this Lease shall commence January 1, 2001. The term of this Lease shall terminate on the last day of the one hundred twentieth (120th) full calendar month after its commencement, unless sooner terminated in accordance with the terms and conditions hereinafter set forth. At the request of either party from time to time made, both parties will execute one or more memoranda or letters stating the commencement and termination dates of the Lease. During the last ninety (90) days of the lease term, provided that Tenant has not exercised any option then available, Landlord shall have the right to place signs in the Leased Premises advertising it for rent.

Section 3.02. Notwithstanding the fact that the Lease term will commence on a date subsequent to the execution of this instrument by Landlord and Tenant, the parties intend that each shall have vested rights immediately upon the signing of this instrument and that this instrument shall be fully binding and in full force and effect from and after execution hereof by Landlord and Tenant.

#### ARTICLE IV

##### Rental

Section 4.01. As "Minimum Rent", Tenant covenants and agrees to pay to Landlord in Houston, Harris County, Texas, at P. O. Box 924133, Houston, Texas 77292-4133, or at such other address as Landlord may from time to time designate in writing, the sum of Six Thousand One Hundred Seventy-Six and 08/100 Dollars (\$6,176.08) multiplied by 24 (plus a pro rata portion thereof for any partial month occurring at the commencement of the term of this Lease if such commencement be other than the first day of a calendar month), plus the sum of Nine Thousand Five Hundred One and 67/100 Dollars (\$9,501.67) multiplied by 36, plus the sum of Eleven Thousand Four Hundred Two and 00/100 Dollars (\$11,402.00) multiplied by 60. Such sums to be payable as follows:

For each of the 1st and the 2nd Lease Years, the sum of Six Thousand One Hundred Seventy-Six and 08/100 Dollars (\$6,176.08) per month;

For each of the 3rd through the 5th Lease Years inclusive, the sum of Nine Thousand Five Hundred One and 67/100 Dollars (\$9,501.67) per month;

For each of the 6th through the 10th Lease Years inclusive, the sum of Eleven Thousand Four Hundred Two and 00/100 Dollars (\$11,402.00) per month.

All such Minimum Rent payments shall be made on the first day of each calendar month, monthly in advance, for each and every month in the term of this Lease. Upon commencement of the term of this Lease, Tenant will pay Landlord Minimum Rent for the first full calendar month of the lease term; but if the lease term does not commence on the first day of a calendar month, Tenant will, in lieu of a full month's Minimum Rent, pay in advance a pro rata part of such sum as Minimum Rent for such partial month.

Section 4.02. In addition to Minimum Rent, effective as of the beginning of the third (3rd) Lease Year, Tenant agrees to pay to Landlord, as "Percentage Rent", the following:

During each "Lease Year" (as hereinafter defined), the sum of five percent (5%) of all "Gross Sales" (as hereinafter defined) in excess of the "Breakpoint" (as hereinafter defined);

The "Breakpoint" as referred to hereinabove shall be defined as the sum of Two Million Three Hundred Thousand and 00/100 Dollars (\$2,300,000.00) per Lease Year.

It is agreed and understood that no Percentage Rent shall be payable during the first and second Lease Years.

In the event that the Minimum Rent for any Lease Year shall be reduced or abated for any reason whatsoever, the Breakpoint for such Lease Year shall be reduced by a percentage thereof equal to the percentage decrease in the Minimum Rent payable for said Lease Year. In the event that any Lease Year contains less than twelve (12) full calendar months, the Breakpoint shall be proportionately increased or decreased, as the case may be, for any such Lease Year.

The term "Gross Sales" includes all moneys or things of value received or receivable, including lease or rental revenue (without deductions for uncollectibles) by Tenant, its sublessees, licensees or concessionaires or others, for merchandise sold or services performed or business conducted (including interest, time-price differential, finance charges and service charges on time-payment sales, credit sales or lay-a-way sales) in, about or from the

Leased Premises (including, without limitation, orders received in person or by mail, telephone or telegraph), including transactions in which delivery is made to the customer at the Leased Premises but the order is taken elsewhere, transactions in which the order is taken at the Leased Premises but delivery is made elsewhere, receipts from mechanical and other vending machines, deposits not refunded to purchasers, and revenues, fees, and/or commissions received from the sale of lottery tickets. The term "Gross Sales" shall not include (1) governmental excise or sales taxes added to the selling price of the item and paid by the Tenant directly to the Government, or (2) refunds or allowances to customers not in excess of the original selling price of the item, or (3) transfers or exchanges of merchandise to another of Tenant's stores made in the regular course of Tenant's business and not for the purpose of avoiding consummation of a sale in the Leased Premises, or (4) returns to shippers or manufacturers, or (5) sales of Tenant's "Removable Trade Fixtures" (as hereinafter defined) after use by Tenant in the Leased Premises, or (6) sales to Tenant's employees, or (7) delivery charges separately billed from food charges, or (8) sales of gift certificates until such time as such certificates are redeemed at the Leased Premises, or (9) fees imposed by credit card companies, or (10) receipts from catering services provided off-premises, or (11) unpaid checks. Under no circumstances shall there be any deduction from Gross Sales by reason of Tenant's being liable to pay any franchise tax, capital stock tax, income tax or similar or dissimilar tax based upon Tenant's income, capital structure, or profits.

All Gross Sales will be recorded either (i) through modern cash registers from which a cash receipt shall be given to each customer for each purchase or (ii) in such other manner as may be approved in writing by Landlord. Full and adequate records and books of account shall be accurately maintained by Tenant on all business operations in or about the Leased Premises. All books of account, records, daily cash register total slips, sales slips relating to Tenant's operation in or about the Leased Premises will be retained by Tenant for a period of three (3) years after preparation, and will be open to inspection by Landlord (or its representative) at all reasonable times. Upon written request, Tenant shall also furnish Landlord copies of any financial statements of Tenant that are prepared during the term of this Lease.

The term "Lease Year", as used herein, shall, in the case of the first Lease Year, mean the period which commences with the date of commencement of the lease term and terminates on December 31st next following the Commencement Date.

Each subsequent "Lease Year" shall mean a period of twelve (12) full calendar months commencing with the January 1st following the last day of the first Lease Year, and commencing with each subsequent annual anniversary of such day.

The last Lease Year of the lease term shall be the period which commences on the day immediately following the last day of the preceding Lease Year and terminates on the last day of the lease term, and the parties recognize that such last Lease Year may be less than twelve (12) full calendar months, depending upon the date of termination of the lease term.

Within forty-five (45) days after the end of each Lease Year in the lease term, Tenant will deliver to Landlord a sworn statement signed by Tenant (if Tenant is an individual), or a general partner of Tenant (if Tenant is a partnership) or a responsible corporate officer of Tenant (if Tenant is a corporation) accurately setting forth the amount of Gross Sales made during such Lease Year, itemized in reasonable detail and will contemporaneously therewith pay any Percentage Rent for such Lease Year.

Landlord may, at any time or times, have an audit made of any such statement, may examine Tenant's sales tax reports, Tenant's inventory movement sheets, and other relevant records for such period, and acceptance of the Percentage Rent tendered by Tenant shall not prejudice these rights. Except as provided in the following paragraph, the cost of the audit shall be borne by Landlord unless such audit shows that Tenant's statement was in error by three percent (3%) or more of the Gross Sales of Tenant for the relevant Lease Year and any additional Percentage Rent is due to Landlord by reason of such error, in

which event Tenant will pay the cost of such audit. Any audit by Landlord may be required by Landlord at any time or times during normal business hours designated by Landlord upon three (3) days prior written notice to Tenant.

In the event Tenant fails to submit to Landlord its statement of Gross Sales in accordance with the terms and conditions contained herein, and provided Landlord has given Tenant written notice of failure to submit such statement and fifteen (15) days from the date of Landlord's notice within which to cure such failure, Percentage Rent shall be payable by Tenant based upon Gross Sales generated by Tenant in the Leased Premises during the same period of the immediately preceding Lease Year and such sum shall be immediately due and payable by Tenant to Landlord. At any time after the date upon which such statement should have been submitted, Landlord shall have the right to audit Tenant's books and records at Tenant's sole cost and expense and Tenant shall pay to Landlord upon demand the cost of such audit. Any additional Percentage Rent due following such audit shall be immediately due and payable.

Computation of the Percentage Rent shall be made separately and independently for each Lease Year of the lease term, without regard to the Gross Sales made during or rental paid for any other Lease Year.

Section 4.03. Except as otherwise expressly provided in this Lease, all rent (including both Minimum Rent and Percentage Rent) and other sums hereunder provided to be paid by Tenant shall be due and payable by Tenant without demand, deduction, abatement or off-set except as expressly provided herein. Past due rent and other past due payments shall bear interest at the "Default Rate", which shall be the lesser of (i) the rate of twelve percent (12%) per annum or (ii) the highest non-usurious rate permitted by law, from the tenth (10th) day following maturity until paid.

All other sums and charges of whatsoever nature required to be paid by Tenant to Landlord pursuant to the terms of this Lease (including, without limitation, all payments set forth in Article XXII, below entitled "Additional Rent") constitute additional rent (whether or not same be designated "Additional Rent") and failure by Tenant to timely pay such other sums or charges may be treated by Landlord as a failure by Tenant to pay Minimum Rent.

#### ARTICLE V

##### Utilities

Section 5.01. Tenant will at its own cost and expense pay for all water, sanitary sewer, gas, electricity and other utilities used in the Leased Premises (which shall be separately metered or submetered) and will save and hold Landlord harmless from any charge or liability for same. Such payments shall be made directly to the supplier of each utility. Tenant will, upon request of Landlord, from time to time during the term hereof, furnish to Landlord copies of Tenant's water and sanitary sewer bills.

Section 5.02. No interruption or malfunction of any utility services (including, without limitation, interruption of such utilities as a result of the enactment or promulgation, regardless of the ultimate validity or enforceability thereof, of any federal, state or local law, statute, ordinance, decree, order, guideline or regulation now or hereafter enacted or promulgated by any governmental, quasi-governmental, regulatory or executive authority) shall constitute an eviction or disturbance of Tenant's use and possession of the Leased Premises or a breach by Landlord of any of its obligations hereunder or render Landlord liable for any damages (including, without limitation, consequential or special damages) or entitle Tenant to be relieved from any of its obligations hereunder (including the obligation to pay rent) or grant Tenant any right of off-set or recoupment. In the event of any such interruption of any such services, Landlord shall use reasonable diligence to restore such service in any circumstances in which such interruption is caused by Landlord's fault. Notwithstanding any term or provision to the contrary contained herein, in the event that such utility services are interrupted due to the negligence or misconduct of Landlord, its agents, employees or contractors, for a period longer

than twenty-four (24) hours, and provided that Tenant shall have given notice of such interruption to Landlord (which notice may in this case be given orally), then to the extent that Tenant cannot and does not conduct its business in the Leased Premises due to such interruption, Minimum Rent and additional charges shall abate until such interrupted utility services have been restored.

#### ARTICLE VI

##### Use

Section 6.01. Tenant will use the Leased Premises solely for the following purpose: for the operation of a cafeteria or buffet-style restaurant. Tenant will not use or permit use of the Leased Premises for any other purpose without the written consent of Landlord. Such store will be advertised as and operated under the name Furr's Cafeteria unless and until the majority of the stores Tenant (or its parent corporation, if Tenant is a corporation) is now or hereafter so operating under the same concept as the operation in the Leased Premises should change their names, in which event the Leased Premises will be advertised as and operated under such new name. Tenant, at its own expense: will comply with all Federal, State, municipal and other laws, codes, ordinances, rules and regulations applicable to that portion of the Leased Premises which Tenant is required to maintain pursuant to this Lease and the business conducted therein by Tenant; will install, remove and alter such fixtures, equipment and facilities in, and make such alterations to, the Leased Premises as may be necessary so to comply; will comply with such reasonable, non-discriminatory regulations as Landlord may promulgate regarding sanitation, cleanliness and other matters (not inconsistent with any other provision of this instrument), including without limitation removal of garbage, trash and other waste (but excluding any right to impose a charge for use of the Common Area); and will furnish and maintain an adequate number of fire extinguishers in good operating condition as may be reasonably required by Landlord, and in any event not less than one such extinguisher for each floor or level of the Leased Premises. Tenant will not engage in any activity or permit any nature of construction by Tenant or any other condition at the Leased Premises which would cause Landlord's fire and extended coverage insurance to be canceled, or the rate therefor increased (or at Landlord's option will upon demand pay any such increase); will not conduct any auction or bankruptcy or fire or "lost-our-lease" or "going-out-of-business" or similar sale; will not make any unlawful use of the Leased Premises or permit any unlawful use thereof; will not use any loudspeaker, phonograph, radio or sound amplifier heard outside the Leased Premises; and will not commit any act which is a nuisance or annoyance to Landlord or to other tenants, or which might, in the reasonable judgment of Landlord, appreciably damage Landlord's goodwill or reputation, or tend to injure or depreciate the Shopping Center.

Section 6.02. Intentionally Deleted.

Section 6.03.A. Tenant binds and obligates itself to occupy and use the entire Leased Premises continuously during the term of this Lease for the purpose provided above and will operate such business during such period with diligence, in accordance with the best standards of operation of such business, and in a manner reasonably calculated to produce maximum Gross Sales as defined above. Tenant will staff its store with sufficient employees and carry sufficient merchandise for maximum Gross Sales. Tenant will remain open on regular business days during reasonable business hours but Tenant shall remain open for business not less than the hours of 11:00 o'clock A.M. until 2:00 o'clock P.M. and 4:00 o'clock P.M. until 8:00 o'clock P.M. Monday through Saturday. Nothing contained herein shall be deemed to prohibit Tenant from operating on Sunday and/or during hours in addition to the minimum hours set forth above.

B. So long as Tenant is open and operating its business in the Leased Premises and the primary purpose of such business is the operation of a cafeteria or buffet-style restaurant, and there has not occurred an "Event of Default" (as defined in Article XVI hereof), Landlord agrees that it will not, after the date hereof, lease space in the Shopping Center to any other tenant whose primary business will be the operation of a cafeteria or buffet-style restaurant. This



limitation shall not apply to (i) present tenants (or their assignees or sublessees) whose leases may not prohibit such use; (ii) any restaurant tenant, present or future, who may occupy less than 5,000 square feet of floor area; or (iii) any restaurant tenant (irrespective of size), present or future, who may (a) operate a salad and/or soup and/or dessert bar in conjunction with a primarily full table service restaurant operation (such as, for example only, a Steak 'N Ale Restaurant or a Chili's Restaurant), and/or (b) offer limited buffet services as part of a restaurant operation that is not primarily a buffet-style restaurant (such as for example only, a Pizza Inn or Pizza Hut that offers limited-hours buffet service). If, at any time during the term of the Lease, Tenant should cease operating its business at the Leased Premises, (except for cessation of operations caused and continuing solely by reasons of Force Majeure, as hereinafter defined) then the provisions of this Section 6.03.B. limiting Landlord's right to lease space in the Shopping Center for the purpose set forth above shall be immediately rendered null and void. Further, in the event any third party shall commence any action or law suit as a result of this agreement, Tenant shall indemnify and hold Landlord harmless for all costs and expenses incurred, including attorneys fees, in defending such action.

In the event Landlord shall enter into any such lease and a tenant shall actually open and operate a business whose primary purpose is the operation of a cafeteria or buffet-style restaurant, then Tenant's only remedy shall be the right to terminate this Lease upon sixty (60) days written notice to Landlord, and, upon termination of this Lease and vacating the Leased Premises, to receive from Landlord a sum equal to one hundred twenty-five percent (125%) of Tenant's "Unamortized Costs". Time is of the essence in this provision, and in the event Tenant shall fail to give notice to Landlord of its election to terminate within one hundred eighty (180) days following the date that such a tenant opens for business in the Shopping Center, Tenant shall be deemed to have waived its right to terminate this Lease due to said new Lease and the provisions of this Section 6.03.B. shall be rendered null and void. As used herein, the term "Unamortized Costs" shall mean the unamortized amount of all leasehold improvements within the Leased Premises paid for by Tenant as shown on Tenant's books for Federal Income Tax purposes; provided, however, that Unamortized Costs shall not include any amounts for Removable Trade Fixtures.

Section 6.04. Tenant shall be responsible, at its sole cost and expense, for the removal of its trash and rubbish. In the event Landlord has established or should establish a common trash and rubbish removal or disposal program at the Shopping Center, Tenant shall participate in such program; provided that any cost to Tenant from doing so shall not exceed the cost Tenant would pay for removal of its trash and rubbish if Tenant contracted individually for such services.

Section 6.05. Tenant shall install and maintain a locking system for the Leased Premises in accordance with Landlord's standard requirements.

## ARTICLE VII

### Common Area

Section 7.01. A. Landlord will provide a "Common Area" (as hereinafter defined) in the Shopping Center and make necessary repairs thereto, and, except when prevented from doing so by causes beyond its control, Landlord will also provide lighting in the parking area in the Shopping Center from dusk until the later of (i) 9:30 o'clock P.M. or (ii) one-half hour after the closing hour of tenants occupying ninety percent (90%) of the floor area of all stores in the Shopping Center; provided, however, in any event Landlord shall provide lighting to that portion of the parking area immediately in front of the Leased Premises until 11:00 p.m. Tenant, its employees, customers and invitees shall have the non-exclusive use, along with others, of the Common Area, except, however, that with respect to the parking area in the Shopping Center: (i) Tenant's customers and invitees (but not Tenant or its employees) may have the non-exclusive use along with others of any available parking space in the Shopping Center; (ii) Tenant and its employees may have the non-exclusive use, along with other tenants and their employees, of only that available parking space from time to time specifically designated by Landlord for such use (and neither Tenant nor its

employees shall use any other parking space in the Shopping Center); and (iii) to effectuate this provision, Tenant will, within five (5) days after written request from Landlord, furnish to Landlord the automobile license numbers of any or all automobiles owned or used by Tenant or its employees. In the event of the failure by Tenant's employees to park in the space specifically designated by Landlord from time to time for such use, Landlord shall have the right, at Landlord's option, to tow off any such automobile parked in violation of the terms hereof, or to charge Tenant the sum of TWENTY-FIVE DOLLARS (\$25.00) per day for each such violation. Tenant agrees to indemnify and hold Landlord harmless from all claims, suits, actions, damages, liability and claims (including costs and expenses of defending against all the aforesaid) arising (or alleged to arise) as a result of the violation by Tenant's employees of the provisions of the preceding sentence. Landlord shall have the right, from time to time, to change the arrangement, layout and/or size of the Common Area; to close all or any portion of the Common Area on days when Tenant is not open (or on other days with Tenant's prior consent, which shall not be unreasonably withheld) to such extent as may, in the opinion of Landlord's counsel, be legally sufficient to prevent a dedication thereof or any diminution of the rights of Landlord with respect thereto; and to do and perform such other acts in the Common Area as Landlord shall, in its good faith judgment, determine to be advisable. The non-exclusive usage rights to the Common Area herein granted to Tenant shall constitute a non-exclusive license existing during the term of this Lease but not thereafter. Landlord shall have the right, from time to time, to establish, modify and enforce reasonable and non-discriminatory rules and regulations with respect to the Common Area (which shall not impose any charge for use of the Common Area) and to police same. Landlord shall have no duty or obligation to prevent or attempt to prevent or terminate any usage of the Common Area or any other portion of the Shopping Center by picketers, protesters, public action groups or other persons advocating any cause, whether or not such usage is permitted under the Constitution and laws of the United States or State of Texas or other laws; provided, however, Tenant may take action in Tenant's name, in which case Tenant shall indemnify and hold Landlord harmless from all costs and expenses incurred by Landlord in the event any action is brought against Landlord due to Tenant's activities. Landlord will not construct any new buildings or expand any existing buildings in the area outlined in "blue" on Exhibit "A"; provided, however, that within the "green" area shown on Exhibit "A" Landlord may replace or expand the existing building so long as the building, as replaced or expanded, does not exceed one (1) story in height or 3,500 square feet in floor area.

B. For purposes of this Lease, the phrase "Common Area" includes the aforesaid customer's parking area, employees' parking area, service drives and service roads, traffic islands, landscaped areas, loading and service areas, sidewalks, gutters and downspouts, sprinkler risers serving all or any buildings located in the Shopping Center, electrical gutters serving all or any buildings located in the Shopping Center, and such other portion or portions of the Shopping Center (not leased or rented or held by Landlord for the purposes of being leased or rented to other tenants) as may from time to time be designated or treated by Landlord as part of the Common Area, as well as drainage facilities and lighting facilities servicing any one or more of the aforesaid areas.

Section 7.02. Tenant will at all times keep all merchandise and displays within the Leased Premises and will not at any time display any merchandise or offer it for sale or (other than during essential loading or unloading operations within the area referred to in Section 7.03 below) permit it to be on adjacent sidewalks or at any other point outside the Leased Premises, nor will Tenant in any other way use or obstruct such sidewalks or other area outside the Leased Premises.

Section 7.03. Tenant will not load or unload any trucks or permit any trucks serving the Leased Premises, whether owned by Tenant or not, to be loaded or unloaded in the Shopping Center except in the area specifically designated for such use by Landlord (which shall be the area previously used by Tenant for such purposes under the "Prior Lease" [as defined in Section 27.01 below]).

Section 7.04. Nothing in this Article or elsewhere in this Lease shall be construed as constituting the Common Area, or any part thereof, as part of the Leased Premises.

#### ARTICLE VIII

##### Assignment and Subletting

Section 8.01. Except for a "Permitted Assignment" (as hereinafter defined) Tenant shall not assign this Lease or sublease the Leased Premises or any part thereof or mortgage, pledge or hypothecate its leasehold interest or grant any concession or license within the Leased Premises or sublease any operating department therein, and any attempt to do any of the foregoing shall be void and of no effect. In the event of any such attempted assignment or attempted sublease or should Tenant, in any other nature of transaction, permit or attempt to permit anyone to occupy the Leased Premises (or any portion thereof) (but excluding a Permitted Assignment), Landlord shall thereupon have the right and option (but no obligation) to cancel and terminate this Lease effective upon fifteen (15) days notice to Tenant given by Landlord at any time thereafter either as to the entire Leased Premises or as to only the portion thereof which Tenant shall have attempted to assign or sublease or otherwise permitted some other party's occupancy; and if Landlord elects to cancel and terminate this Lease Contract as to the aforesaid portion of the Leased Premises, then the Minimum Rent (but no other charges) as to the remainder of the Leased Premises shall thereafter be proportionately reduced. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law.

Section 8.02. Notwithstanding anything contained herein to the contrary, Tenant may, without consent of Landlord, at any time assign, sublet or otherwise transfer this Lease or any portion thereof to any parent, subsidiary or affiliate corporation or entity; or any corporation or other entity resulting from the consolidation or merger of Tenant into or with any other entity, or to any person, firm, entity or corporation under common control with or acquiring a majority of Tenant's issued and outstanding capital stock, or other beneficial ownership interest, or a substantial part of Tenant's physical assets. As used herein, the expression "affiliate corporation" or "entity" means a person or business entity, corporate or otherwise, that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with Tenant. The word "control" means the right and power, direct or indirect, to direct or cause the direction of the management and policies of a person or business entity, corporation or otherwise, through ownership or voting securities, by contract or otherwise. Provided, however, that in the event of an assignment or subletting the use and operation being conducted in the Leased Premises shall remain substantially unaffected and the assignee shall assume in writing the terms and conditions set forth herein to be observed and performed by Tenant. It being further agreed that nothing herein contained shall be construed as releasing Tenant from any of its liabilities or other obligations hereunder. Any transfer as described herein shall be known as a "Permitted Assignment."

In the event of a Permitted Assignment, Tenant shall provide Landlord, on or before the effective date thereof, with written notice of such Permitted Assignment and a fully executed copy of the assignment and assumption documents which are used to effectuate the transfer contemplated herein.

In no event shall Tenant be permitted to use a series of one or more Permitted Assignments to "spin-off" this Lease to independent third parties. As an example of the foregoing, Tenant shall not assign this Lease to an affiliate corporation whose assets consist solely of this Lease and the rights granted herein and thereafter sell the stock of such affiliate corporation to an independent third party. The result of what would otherwise be two, independent Permitted Assignments would become a transfer of this Lease to an independent third party. Any such transfer is prohibited by the terms of Section 8.01. above. Nothing contained herein shall be deemed to prohibit Tenant from becoming a publicly traded company whose shares are traded on the New York Stock Exchange, the American Stock Exchange or the NASDAQ National Market.

Section 8.03. If this Lease be assigned or if the Leased Premises be subleased (whether in whole or in part) or in the event of the mortgage, pledge or hypothecation of the leasehold interest or grant of any concession or license within the Leased Premises or if the Leased Premises be occupied in whole or in part by anyone other than Tenant, Landlord may nevertheless collect rent from the assignee, sublessee, mortgagee, pledgee, party to whom the leasehold interest was hypothecated, concessionee or licensee or other occupant and apply the net amount collected to the rent payable hereunder, but no such transaction or collection of rent or application thereof by Landlord shall be deemed a waiver of these provisions or a release of Tenant from the further performance by Tenant of its covenants, duties and obligations hereunder.

#### ARTICLE IX

##### Repair and Maintenance

Section 9.01. Landlord will repair, maintain and (at Landlord's option) replace the following portions of the Leased Premises but none other:

(i) damage to structural portions of the Leased Premises (said "structural portions" consisting only of the foundation, footings, structural slab, structural supports and frames, exterior walls and fascia and members supporting the roof but excluding, by way of example, but not limitation, roof deck, roof membrane and roof covering, all interior partition walls and the interior side of building perimeter walls enclosing the Leased Premises, all doors, moldings, trim, window frames, door frames, closure devices, hardware and plate glass); and

(ii) any utility lines (sewer, water, gas or electrical) located outside the perimeter walls enclosing the Leased Premises;

provided, however, in the event any of the foregoing damage is caused by one or more acts or omissions of Tenant, its agents or employees, then such damage shall not be subject to Article XI hereunder and the Tenant shall bear the cost of such repairs. Tenant will promptly give Landlord written notice of any damage to the Leased Premises requiring repair by Landlord. Landlord shall not be responsible (except as specifically provided in this paragraph) for maintaining the premises in condition suitable for the use provided under this Lease or for performing any repair or maintenance work other than that specifically stated in this Section 9.01 and in Article XI (entitled "Fire or Destruction of Premises") or Article XIX (entitled "Eminent Domain").

Section 9.02. All damage to the Leased Premises, other than that which Landlord undertakes to repair in Section 9.01 or Articles XI or XIX will be repaired and all maintenance will be performed and replacements and renewals will be made by Tenant at Tenant's cost and expense including without limitation all other maintenance and repairs necessary or appropriate to cause the Leased Premises to be suitable for Tenant's intended commercial purpose and occupancy; (Tenant to be responsible for repairing all damage to the Leased Premises caused by one or more acts or omissions of Tenant, its agents or employees; and Tenant will make all repairs, perform all maintenance and provide all renewals and replacements at the Leased Premises, including but not limited to the floor covering, heating and air conditioning equipment (whether any such equipment is roof mounted or otherwise affixed outside the Leased Premises), electrical equipment and fixtures, plumbing fixtures and equipment, escalators, elevators, wiring (including that within walls or ceiling or under flooring or floor covering), and plumbing lines (including water lines and gas lines) within walls or ceilings and under flooring or floor covering. In no event shall Landlord be responsible for repair or replacement of the floor covering in the Leased Premises, even if such repair or replacement is necessary as a result of a casualty as otherwise set forth in Article XI below. Tenant will replace all broken or cracked plate glass and glass windows.

In addition to the foregoing, and notwithstanding anything to the contrary contained in Article VII, Tenant shall be responsible, at Tenant's cost and expense, for all maintenance and repairs required to be made to the enclosed area

("Walled Area") adjacent to the northern perimeter wall of the Leased Premises (which area contains, among other things, Tenant's trash compactor).

If Landlord, in its reasonable judgment, considers necessary any repairs, maintenance, renewals or replacements required by the provisions of this Lease to be made or provided by Tenant, Landlord may request that Tenant make such repairs or perform such maintenance or provide such renewal or replacements, and, upon Tenant's failure or refusal to do so promptly (and in any event in case of an emergency irrespective of whether Landlord shall have requested or obtained Tenant's prior consent), Landlord shall have the right (but shall not be obligated), either itself or through a third party contractor, to make such repair, perform such maintenance or provide such renewal or replacement (Tenant hereby waiving any damage caused thereby including, without limitation, any damage caused by any such third party contractors engaged by Landlord to perform such work); thereupon Tenant will, at Landlord's election, on demand pay (or reimburse Landlord for) the cost thereby incurred by Landlord; and in addition, Tenant shall pay Landlord upon demand interest at the Default Rate (as defined in Section 4.03). Notwithstanding the foregoing, in the event any repair made by Landlord for Tenant's account under this Section 9.02 exceeds Two Thousand and 00/100 Dollars (\$2,000.00), Landlord shall obtain bids from three (3) contractors qualified to perform such repair, and Tenant shall not be liable for an amount in excess of the lowest conforming bid. For these purposes an "emergency" shall be deemed to exist if, in the good faith judgment of Landlord, prompt action is needed in order to prevent death, bodily injury or significant property damage. Any such sum which Tenant becomes liable to pay to or reimburse Landlord for hereunder may be treated by Landlord as a portion of the rental due and owing by Tenant to Landlord with the next succeeding installment of Minimum Rent due hereunder, for purposes of determining Landlord's remedies in the event of any failure by Tenant to pay such sum to Landlord contemporaneous with the next succeeding installment of Minimum Rent due hereunder. If Landlord makes any such repairs, performs any such maintenance, or provides any such renewal or replacement, or undertakes to do so (or engages any third party contractors to do so), then Landlord shall not be liable to Tenant for (and Tenant shall indemnify and hold Landlord harmless with respect to) all loss or damage that may occur to Tenant's merchandise, fixtures or other property or to Tenant's business incident to such action by Landlord.

Section 9.03. Tenant will not commit waste and will not injure the Leased Premises or the building of which they are a part, but will maintain the Leased Premises in a clean, attractive condition and in good repair, and shall also keep adjacent sidewalks clean (except for removal of ice and snow, which is the sole responsibility of Landlord). Upon termination of this Lease, Tenant will surrender and deliver up the Leased Premises to Landlord broom-clean and in the same condition in which they existed at the commencement of this Lease, excepting only ordinary wear and tear and damage arising from acts of God, and excepting also any damage required hereunder to be repaired by Landlord. Upon termination of this Lease, Tenant will also surrender to Landlord all keys to the Leased Premises at the place stated herein for the payment of rent and inform Landlord, in writing, of all combinations on locks, safes and vaults, if any, at the Leased Premises.

Section 9.04. Landlord (and any mortgagee or Deed of Trust beneficiary as to the Leased Premises) will have a right to enter the Leased Premises at any reasonable time (including during Tenant's business hours) to inspect the condition thereof, to make necessary repairs and improvements, or to repair or maintain pipes, wires, and other facilities serving its nearby property and for other lawful purposes; provided however, such right shall not be exercised in a manner which would unreasonably interfere with Tenant's conduct of its business at the Leased Premises.

Section 9.05. Should any mechanic's liens or other liens or affidavits claiming liens be filed against the Leased Premises or any portion thereof or interest therein for any reason whatsoever incident to the acts or omissions of Tenant or any contractor of Tenant or any such contractor's subcontractor or any laborer performing labor or materialman furnishing materials at or for the Leased Premises or by reason of any specially fabricated materials whether or not placed at the Leased Premises, Tenant shall cause the same to be cancelled and

discharged of record by payment, bonding or otherwise, within thirty (30) days after notice by Landlord, or at such earlier time as is necessary to prevent the foreclosure thereof.

Section 9.06. Notwithstanding any term or provision to the contrary contained herein, if Landlord fails to complete (i) commence any repairs (other than "emergency repairs") to the Leased Premises required to be made by Landlord in this Article IX within fifteen (15) days following written notice from Tenant and complete same within forty-five (45) days following such written notice, or (ii) commence "emergency repairs" required to be made by Landlord hereunder within twenty-four (24) hours following receipt of actual notice (which may in this case be telephonic notice) and thereafter complete such "emergency repairs" in an expeditious manner, or (iii) complete any repairs to that portion of the parking area outlined in "red" on Exhibit "A" required in Article VII above within sixty (60) days following written notice from Tenant, and provided that Landlord is not then in the process of diligently and continuously completing such repairs, Tenant may perform such repairs, and Landlord shall reimburse Tenant the actual cost of such repairs within thirty (30) days following receipt of paid invoices or receipts detailing the work performed. As used herein the term "emergency repairs" shall mean repairs required in a situation that presents imminent risk of death, bodily injury, significant property damage, or material interference with Tenant's normal business operations. In the case of any repair costing more than Two Thousand Dollars (\$2,000.00), Tenant shall obtain bids from three (3) contractors qualified to perform such repair, and Landlord shall not be liable for an amount greater than the amount of the lowest conforming bid.

In the event that Landlord fails or refuses to reimburse Tenant within the aforementioned thirty (30) day period, Tenant shall be entitled to offset the amount owed by Landlord (with interest thereon from the tenth (10th) day following the date funds are advanced by Tenant until the date paid at the Default Rate [as defined in Section 4.03]), as follows: Tenant may offset such amounts only against Percentage Rent.

#### ARTICLE X

##### Additions and Fixtures

Section 10.01. Except as expressly provided below, Tenant will make no alterations or additions to the Leased Premises without the prior written consent of Landlord. At such time as Tenant requests such written consent of Landlord, Tenant shall submit plans and specifications for such alterations or additions to Landlord. Notwithstanding the foregoing, Tenant may make interior, non-structural alterations that do not exceed the sum of \$50,000.00 without Landlord's consent.

Section 10.02. Subject to the lien and security interest and other rights of Landlord referred to in Article XV, Tenant shall remove "Removable Trade Fixtures", as hereinafter defined, (excluding, however, ducts, conduits, wiring, pipes, paneling or other wall covering or floor covering), and, in addition to other applicable provisions of this Lease regarding such removal, the following shall apply: (1) such removal must be made prior to the termination of the term of this Lease; (2) Tenant must not be in default of any obligation or covenant under this Lease at the time of such removal; and (3) such removal must be effected without material damage to the Leased Premises or the building of which the Leased Premises are a part and Tenant must promptly repair all damage caused by such removal. For the purposes hereof, the phrase "Removable Trade Fixtures" means the following: all of Tenant's signs, counters, tables, chairs, desks, racks, merchandisers and displays, standards, wall brackets, hang-rods, shelves, mirrors, marking equipment, cash registers and other business machines, restaurant equipment, walk-in coolers, freezers, restaurant-related rooftop equipment (excluding all rooftop-mounted HVAC equipment), ventilating hoods, buffet counters, food lines and other personal property in and about the Leased Premises, other than the items specifically excluded in the first sentence of this Section 10.02.

Tenant will, by the termination of this Lease, remove all Removable Trade Fixtures installed or placed by it in the Leased Premises and will repair any

damage caused by such removal and restore the Leased Premises to the condition thereof at the time of the commencement of the term of this Lease, excepting only ordinary wear and tear and damage hereunder not otherwise required to be repaired by Tenant. In the event that Tenant fails to remove any Removable Trade Fixtures and Tenant fails to comply with such request prior to the termination of the term of this Lease, or if Tenant fails to repair any damage to the Leased Premises and/or the building of which the Leased Premises are a part caused by its removal of any of the aforesaid, then Landlord shall have the right (but shall not be obligated) to remove such Removable Trade Fixtures installed or placed by Tenant in the Leased Premises (Tenant hereby waiving any damage caused thereby) or repair any such damage to the Leased Premises and/or building of which the Leased Premises are a part and thereupon Tenant will, at Landlord's election, on demand pay (or reimburse Landlord for) the cost of such removal and the cost of transportation and storage on any Removable Trade Fixtures which Landlord elects to store pending disposition thereof, and the cost of repairing any such damage to the Leased Premises and/or building of which the Leased Premises are a part and, in addition, Tenant shall pay Landlord upon demand interest on all such sums at the highest lawful rate. All plumbing or electrical wiring connections exposed as a result of the removal of Tenant's Removable Trade Fixtures, shall be capped by Tenant in a safe and workmanlike manner.

In the event that Tenant shall have assigned this Lease or subleased the Leased Premises (in whole or in part), subject to and in accordance with the provisions of Article VIII above, alterations in the Leased Premises of any scope or extent made (without prior notice to or consent of Tenant) by Landlord or by the party occupying (or contemplating occupancy of) the Leased Premises (with or without the consent of Landlord) shall not have the effect of discharging or otherwise impairing or affecting the continuing liability under this Lease of Tenant or any one holding under Tenant; provided however, the preceding shall not be interpreted as dispensing with the necessity for consent of Landlord to alterations of the Leased Premises in circumstances in which such consent is required under other provisions of this Lease.

Section 10.03. Tenant shall pay the full amount of all taxes, assessments, impositions, levies, charges, excises, fees, licenses and other sums levied, assessed, charged or imposed by any governmental authority or other taxing authority upon Tenant's leasehold interest under this Lease and all alterations, additions, fixtures (including Removable Trade Fixtures), inventory and other property installed or placed or permitted at the Leased Premises by Tenant (to the extent separately assessed from the Leased Premises). Within thirty (30) days after notice from Landlord, Tenant shall furnish Landlord a true copy of receipts evidencing such payment received by Tenant from the governmental authority or other taxing authority assessing such charges.

Tenant will also pay all insurance premiums assessed or levied upon any alterations, additions, fixtures or property installed in the Leased Premises by the Tenant and all insurance related to Tenant's use, occupancy and operations within the Leased Premises and the Shopping Center, provided that Tenant may elect to self-insure as to such matters.

## ARTICLE XI

### Fire and Destruction of Premises

Section 11.01. If either (a) at any time when thirty-six (36) full calendar months or more remain in the lease term, the Leased Premises should be partially or totally destroyed or damaged by fire or other risk covered by Landlord's fire and extended coverage insurance, or (b) when less than thirty-six (36) months but more than twelve (12) months remain in the lease term, the Leased Premises are damaged to an extent of less than one-third (1/3) of the then replacement cost above the foundation Landlord will be obligated promptly to repair and reconstruct the damaged portion of the Leased Premises to substantially the condition in which Landlord had placed the Leased Premises at the time of Landlord's tender of possession thereof to Tenant pursuant to the terms of this Agreement. If the Leased Premises should be destroyed or damaged by fire or any other risk other than as provided in the immediately preceding

sentence, then Landlord shall have the election to terminate this Lease or to repair and reconstruct the Leased Premises, and Landlord will notify Tenant of its election within thirty (30) days after receipt of written notice from Tenant of such damage or destruction.

Section 11.02. Notwithstanding that the Leased Premises may not be destroyed or damaged by fire or other risk, in the event that other buildings containing twenty-five percent (25%) or more of the ground floor building area of the Shopping Center shall be damaged or destroyed by fire or other risk, whether or not covered by Landlord's fire and extended coverage insurance, Landlord shall have the election to terminate this Lease or to continue this Lease in full force and effect, and Landlord will notify Tenant of Landlord's election within thirty (30) days after receipt of written notice by Landlord of such other damage or destruction.

Section 11.03. In any circumstances described above where Landlord is either obligated to repair and restore the Leased Premises, or where Landlord elects to repair and restore the Leased Premises, this Lease shall continue in full force and effect, and such repairs will be made by Landlord within a reasonable time thereafter, subject to delays reasonably caused by governmental restrictions, strikes, lockouts, shortages of labor or material, acts of God, war or civil commotion, fire, unavoidable casualty, inclement weather or any other cause beyond the control of Landlord (all of the aforesaid causes for delay being herein sometimes referred to as "Force Majeure"). Minimum Rent and Additional Rent shall abate proportionately during the period and to the extent that the Leased Premises are unfit for use by Tenant and not actually used by Tenant in the ordinary conduct of its business. For purposes of computing the Percentage Rent due hereunder during any such period, the computation shall be based upon the proportionately abated Minimum Rent provided for in the preceding sentence. Notwithstanding any provision to the contrary contained herein, in the event Landlord elects or is required to repair and reconstruct the Leased Premises, Landlord shall proceed with due diligence to perform such work; however, in the event Landlord should fail to complete its repairs within one hundred eighty (180) days after the date upon which Landlord and Tenant agree upon plans and specifications for the reconstruction of the Leased Premises and Landlord has obtained all required permits, then, at any time following the expiration of the aforesaid one hundred eighty (180) day period, but in any event prior to the date Landlord completes its repairs and reconstruction, Tenant shall have the right to terminate this Lease upon written notice to Landlord.

Section 11.04. If (a) less than twelve (12) months remain in the term of the Lease and (b) either (i) the Leased Premises are damaged or destroyed by fire or other casualty to an extent greater than five percent (5%) of replacement value above the foundation, or (ii) more than fifty percent (50%) of the total building area of the Shopping Center is damaged or destroyed, then Tenant may terminate this Lease upon written notice to Landlord.

## ARTICLE XII

### Liability and Indemnity

Section 12.01. Except only as to injury, death or property damage proximately caused by the negligence or misconduct of Landlord or its employees, agents or contractors, or any failure of Landlord to perform any of its obligations under the terms of this Lease, for which Landlord is legally liable, Tenant agrees to indemnify and hold Landlord and Landlord's employees harmless from all losses, claims, suits, actions, damages, and liability (including costs and expenses of defending against all of the aforesaid) arising (or alleged to arise) from any act or omission of Tenant or Tenant's agents, employees, assignees, sublessees, contractors, customers or invitees, or arising from any injury to or death of any person or persons or damage to or destruction of the property of any person or persons occurring in or about the Leased Premises or on the sidewalks adjacent thereto or within the Walled Area, and Tenant assumes responsibility for the condition of the Leased Premises and agrees to give Landlord written notice in the event of any damage, defect or disrepair therein. Tenant agrees to use and occupy the Leased Premises and place its fixtures,



equipment, merchandise and other property therein at its own risk and (except as otherwise provided in this Section 12.01) hereby releases Landlord and its agents from all claims for any damage or injury to the full extent permitted by law.

Section 12.02. Tenant agrees to take out and maintain at all times during the lease term a policy of fire and extended coverage insurance on its alterations, additions, fixtures, equipment, merchandise, Removable Trade Fixtures and other property placed at the Leased Premises by or at the direction of Tenant (including but not limited to, the rooftop HVAC unit and plate glass). Such policy shall contain a replacement cost endorsement. In the event that either Landlord or Tenant sustains a loss by reason of fire or other casualty which is covered (or could have been covered) by fire and extended coverage insurance policy or other insurance policy or rider thereto, and such fire or casualty is caused in whole or in part by acts or omissions of the other party, its agents, servants or employees, then the party sustaining such loss agrees to look solely to its insurance proceeds (if any); and such party shall have no claim or right of recovery against the other party to this Lease, or its agents, servants or employees; and no third party shall have any claim or right of recovery by way of subrogation or assignment or otherwise. To the extent that Tenant fails to take out or maintain the aforesaid fire and extended coverage insurance policy, such failure shall be a defense to any claim asserted by Tenant against Landlord by reason of any loss sustained by Tenant due to fire or other casualty, notwithstanding that such loss might have been proximately caused solely by the negligence of Landlord, but only to the extent such loss otherwise would have been covered by such insurance had it been obtained by Tenant. Such insurance policy shall contain a loss payable clause designating Tenant and Landlord as loss payees as their respective interests may appear. Tenant shall be responsible for the safety and personal well being of Tenant's employees within the Leased Premises. Tenant agrees that Landlord shall not be responsible or liable to Tenant or those claiming under Tenant (including, without limitation, Tenant's agents, servants, employees, customers and invitees) for injury, death or damage or loss occasioned by the acts or omissions of persons occupying any other part of the Shopping Center or occasioned by the condition of the Shopping Center or property of any other occupant of any part of the Shopping Center or the acts or omissions of any other person or persons present at the Shopping Center who are not occupants of any part thereof, whether or not such persons are present with the knowledge or consent of Landlord except to the extent the same results from the negligence or misconduct of Landlord, its employees, agents or contractors; and, except to such extent, Tenant agrees to indemnify and hold Landlord harmless from all losses, claims, suits, actions, damages, and liabilities arising (or alleged to arise) therefrom. Notwithstanding the foregoing, as long as the Tenant hereunder remains Cafeteria Operators, L.P. or a transferee of Cafeteria Operators, L.P. pursuant to a "Permitted Assignment" under Section 8.02 above, Tenant may elect to self-insure any or all of the coverages required by this Section 12.02; and to the extent that Tenant does not purchase such coverages, Tenant will be deemed to have elected to self-insure.

Section 12.03. Tenant will take out and maintain, at its own cost and expense, commercial general liability insurance coverage in a minimum amount of \$1,000,000.00 combined single limit, which commercial general liability policy shall include (i) coverage for bodily injury and death, property damage and products liability coverage; (ii) contractual liability coverage insuring the obligations of Tenant under the terms of this Lease; and (iii) fire legal liability coverage with respect to the Leased Premises and the building of which they are a part in the amount of at least \$25,000.00. Such policy shall name Landlord (and any of its affiliates, subsidiaries, successors and assigns designated by Landlord) and Tenant as the insureds.

If Tenant is engaged in any way in the sale of alcoholic beverages, either for consumption of alcoholic beverages on the premises or off the premises, Tenant will also maintain liquor liability insurance with the limits of not less than \$1,000,000.00 each common cause and \$1,000,000.00 aggregate. If written on a separate policy from the commercial general liability policy, such policy shall name Landlord (and any of its affiliates, subsidiaries, successors and assigns designated by Landlord) as an additional insured. Such policy shall contain a cross liability endorsement or severability provision.

Section 12.04. The policies of insurance required to be maintained by Tenant under the terms of this Lease are referred to in this Section 12.04 in the singular as a "Required Policy" and in the plural as "Required Policies". All Required Policies shall be in a form and with a company acceptable to Landlord and shall be endorsed so as to be non-cancellable with respect to Landlord and not subject to material change except upon thirty (30) days prior written notice to Landlord given in the manner set forth in Article XXIII, below. Tenant agrees to deliver to Landlord a duplicate original or certificate of each Required Policy upon tender of possession of the Leased Premises to Tenant and in the event Landlord shall have tendered such possession of the Leased Premises to Tenant but Tenant shall not have delivered a duplicate original or certificate of any Required Policy, then, at Landlord's election, Tenant shall not be permitted to enter into possession or occupy the Leased Premises until such time as such duplicate originals or certificates are so delivered to Landlord (but the Leased Premises shall be deemed "tendered" to Tenant for all other purposes under this Lease, including, without limitation, the commencement of the term of this Lease and accrual of rent). At all times during the lease term (and prior thereto and subsequent thereto under the circumstances stated in the succeeding sentence), Tenant shall cause a duplicate original or a certificate of all Required Policies to be deposited with Landlord. If Tenant fails to have a duplicate original or certificate of any Required Policy on deposit with Landlord at any time during the lease term (and prior thereto in the event of any entry into possession by Tenant prior to the commencement date of the lease term or subsequent to the termination date hereof in the event of a holdover), then Landlord shall have the right (but no obligation) to take out and maintain such Required Policy, and if Landlord does so and gives notice thereof to Tenant, then Tenant shall be obligated to pay Landlord the amount of the premium applicable to such Required Policy within five (5) days following any such notice from Landlord. Any failure of Tenant to make such payment to Landlord may be treated by Landlord as a default by Tenant in the payment of Minimum Rent required to be paid by Tenant hereunder. Landlord acknowledges that (i) the coverages evidenced on the certificate attached hereto as Exhibit "E" satisfy the requirements of a Required Policy with respect to the coverages required by Section 12.03, and (ii) as of the date of this Lease, all carriers shown on Exhibit "E" are acceptable to Landlord and will remain acceptable so long as each maintains an A.M. Best rating (or equivalent) of at least "A-X".

#### ARTICLE XIII

##### Diversion of Sales

Section 13.01. Tenant agrees that if during the term of this Lease, either Tenant or any person, corporation, partnership, joint stock association, trust or other firm or entity which controls Tenant or is controlled by Tenant or is under common control with Tenant (and also, in the event Tenant is a corporation, if any officer or director thereof or shareholder owning more than ten percent [10%] of the outstanding stock thereof, or parent, subsidiary or related or affiliated corporation) either directly or indirectly, commences operation of any store selling or otherwise sells any merchandise or services of the type to be sold by Tenant in the Leased Premises as provided in Section 6.01 hereof or similar or related items, or in any other manner competes with the business provided herein to be conducted by Tenant at the Leased Premises, within a radius of one (1) mile of the Leased Premises, which Tenant acknowledges is a reasonable area for the purpose of this provision, then in such event, the rent payable by Tenant hereunder shall be adjusted as follows: (a) thereafter, during the period of such other store's operation or other sales, the monthly Minimum Rent shall be the greater of: (i) one hundred twenty-five percent (125%) of the amount stipulated in Section 4.01 hereof for each calendar month during the term hereof during which such operations are conducted; or (ii) the aggregate Minimum Rent and Percentage Rent payable hereunder for the last Lease Year prior to the commencement of such operations divided by twelve (12); and (b) thereafter, during the period of such other store's operation or other sales, the Percentage Rent shall be computed by adding fifty percent (50%) of all amounts sold at such other store, which would be "Gross Sales" (as herein defined) if the merchandise had been sold, services rendered or business conducted at or from the Leased Premises (in lieu of or from such other store) to the amount of Gross Sales (as

herein defined). Such adjustment in rent reflects the estimate of the parties as to the damages which Landlord would be likely to incur by reason of the diversion of business and customer traffic from the Leased Premises and Shopping Center to such other store within such radius, as a proximate result of the establishment of such other store. Notwithstanding any provision to the contrary contained herein, the limitations of this Section 13.01 shall not apply to (i) any operation in existence as of the date of this Lease; (ii) any operation at all during the final year of the Lease term (as same may be extended pursuant to the Option Rider attached hereto); or (iii) relocation of any operation presently within the one (1) mile radius restriction to another location within such radius. The operations referred to in the immediately previous sentence shall include, without limitation, Tenant's non-cafeteria, non-buffet operations, including without limitation El Paso Barbecue, Zookini's Restaurant, and Zookini's Soup, Salad and Grill Restaurant.

#### ARTICLE XIV

##### Security Deposit

(Intentionally Omitted)

#### ARTICLE XV

##### Landlord's Lien

Section 15.01. To secure the payment of all rent due and to become due hereunder and the faithful performance of this Lease by Tenant and to secure all other indebtedness and liabilities of Tenant to Landlord now existing or hereafter incurred, Tenant hereby gives to Landlord an express first and prior contract lien and security interest on all property (including fixtures, equipment, chattels and merchandise) which may be placed in the Leased Premises, and also upon all proceeds of any insurance which may accrue to Tenant by reason of destruction of or damage to any such property and also upon all of Tenant's interests as lessee and rights and options to purchase fixtures, equipment and chattels placed in the Leased Premises (in case of fixtures, equipment and chattels leased to Tenant which are placed in the Leased Premises). All exemption laws are hereby waived in favor of said lien and security interest and in favor of Landlord's statutory lien. This lien and security interest are given in addition to the Landlord's statutory lien and shall be cumulative thereto. This lien and security interest may be foreclosed with or without court proceedings by public or private sale provided Landlord posts handbills and gives Tenant at least ten (10) days' notice of the time and place of said sale in accordance with NMSA 48-3-14, and Landlord shall have the right to become the purchaser, upon being the highest bidder at such sale. The notice referred to in the preceding sentence may (but need not be) given by Landlord to Tenant contemporaneously with any notice from Landlord to Tenant which may be given as to an "Event of Default", as such quoted phrase is referred to in Section 16.01, below. Contemporaneously with the execution of this Lease (and if requested hereafter by Landlord), Tenant shall execute and deliver to Landlord National Uniform Commercial Code Financing Statements in sufficient form so that when properly filed, the security interest hereby given shall thereupon be perfected. If requested hereafter by Landlord, Tenant shall also execute and deliver to Landlord National Uniform Commercial Code Financing Statement change instruments in sufficient form to reflect any proper amendment of, modification in or extension of the aforesaid contract lien and security interest hereby granted. Landlord shall, in addition to all of its rights hereunder, also have all of the rights and remedies of a secured party under the New Mexico Uniform Commercial Code. Upon written request of Tenant, Landlord shall subordinate its security interest on Landlord's standard subordination form (which shall be substantially in the form attached hereto as Exhibit "X" and made a part hereof) to a qualified third party lender for the purpose of Tenant financing its inventory, fixtures and equipment at the Leased Premises.

Section 15.02. In the event that Landlord shall have taken possession of the Leased Premises pursuant to the authority hereinafter granted in connection

with an Event of Default or for any other lawful reason, Landlord shall have the right to keep in place and use all of the furniture, fixtures and equipment at the Leased Premises, including that which is owned by or leased to Tenant, at all times prior to any foreclosure thereon by Landlord or repossession thereof by any lessor thereof or third party having a lien thereon. Landlord shall also have the right to remove from the Leased Premises and Shopping Center (without the necessity of obtaining a distress warrant, writ of sequestration or other legal process) all or any portion of such furniture, fixtures, equipment and other property located thereon and place same in storage at any premises within the county in which the Leased Premises are located or dispose of same in any manner acceptable to Landlord; and in such event, Tenant shall be liable to Landlord for costs incurred by Landlord in connection with such removal, storage and/or disposal and shall indemnify and hold Landlord harmless from all loss, damage, cost, expense and liability in connection with such removal, storage and/or disposal. Landlord shall also have the right to relinquish possession of all or any portion of such furniture, fixtures, equipment and other property to any person ("Claimant") claiming to be entitled to possession thereof who presents to Landlord a copy of any instrument represented to Landlord by Claimant to have been executed by Tenant (or any predecessor of Tenant) granting Claimant the right under various circumstances to take possession of such furniture, fixtures, equipment or other property, without the necessity on the part of Landlord to inquire into the authenticity of said instrument copy or Tenant's (or Tenant's predecessor's) signature thereon and without the necessity of Landlord's making any nature of investigation or inquiry as to the validity of the factual or legal basis upon which Claimant purports to act; and Tenant agrees to indemnify and hold Landlord harmless from all cost, expense, loss, damage and liability incident to Landlord's relinquishment of possession of all or any portion of such furniture, fixtures, equipment or other property to Claimant. Tenant stipulates and agrees that the rights herein granted Landlord are commercially reasonable.

#### ARTICLE XVI

##### Default, Remedies and Determination of Damages

Section 16.01. Each of the following acts or omissions of Tenant or occurrences shall constitute an "Event of Default":

- (a) Failure or refusal by Tenant to timely pay Minimum Rent or Percentage Rent or any other sum when due following ten (10) days written notice; provided that, in no event shall Landlord be required to give such notice more than two (2) times during any calendar year, and from and after Tenant's third (3rd) such failure or refusal during any calendar year, Landlord shall be entitled to exercise any or all of the remedies set forth in Article XVI without prior notice to Tenant; or
- (b) Failure or refusal by Tenant to comply with the obligations of Tenant set forth in Article VI and/or Article VIII of this Lease within ten (10) days following written notice to Tenant; or
- (c) Failure or refusal by Tenant to timely perform or observe any other covenant, duty or obligation of Tenant under this Lease; provided, however, notwithstanding the occurrence of such Event of Default, Landlord shall not be entitled to exercise any of the remedies provided for in this Lease or by law unless such Event of Default continues beyond the expiration of thirty (30) days following notice to Tenant of such Event of Default. However, in the event such other covenant, duty or obligation reasonably requires more than thirty (30) days for the curing thereof, such failure to cure shall not be deemed to be an "Event of Default" if Tenant shall have commenced the curing of such failure within such thirty (30) day period and having commenced such curing carries forward the curing thereof to completion with reasonable diligence; or
- (d) Abandonment or vacating of the Leased Premises or any significant portion thereof; or

(e) The entry of a decree or order for relief by a court having jurisdiction over Tenant or any guarantor of Tenant's obligations hereunder in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Tenant or any guarantor of Tenant's obligations hereunder or for any substantial part of either of said parties' property, or ordering the winding-up or liquidation of either of said parties' affairs; or

(f) The commencement by Tenant or any guarantor of Tenant's obligations hereunder of a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by either of said parties to the appointment of a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of any substantial part of the property of Tenant or any guarantor of Tenant's obligations hereunder, or to the taking possession of any such property by any such functionary or the making of any assignment for the benefit of creditors by either Tenant or any guarantor of Tenant's obligations hereunder, or the failure of Tenant or any guarantor of Tenant's obligations hereunder generally to pay its debts as such debts become due, or the taking of corporate action by any corporate Tenant or any corporate guarantor of Tenant's obligations hereunder in furtherance of any of the foregoing.

Section 16.02. This Lease and the term and estate hereby granted and the demise hereby made are subject to the limitation that if and whenever any Event of Default shall occur, after such notice, if any, as is provided in Section 16.01, Landlord may, at its option, in addition to all other rights and remedies given hereunder or by law or equity, do any one or more of the following:

- (a) Terminate this Lease, in which event, Tenant shall immediately surrender possession of the Leased Premises to Landlord;
- (b) Enter upon and take possession of the Leased Premises and expel or remove Tenant and any other occupant therefrom, with or without having terminated the Lease; or
- (c) Alter locks and other security devices at the Leased Premises.

Exercise by Landlord of any one or more remedies hereunder granted or otherwise available shall not be deemed to be an acceptance of surrender of the Leased Premises by Tenant, whether by agreement or by operation of law, it being understood that such surrender can be effected only by the written agreement of Landlord and Tenant. Upon the occurrence of an Event of Default, Landlord shall not be obligated to give any notice (written or oral) regarding alteration of locks or other security devices at the Leased Premises, or notice (written or oral) to vacate the Leased Premises or notice of liability for Landlord's attorney's fees prior to Landlord's alteration of such locks or security devices or institution of proceedings in forcible detainer. In the event Landlord exercises its rights to alter the locks at the Leased Premises, Landlord shall only be required to provide Tenant with a new key during Landlord's regular business hours, provided that in no event shall Landlord be required to provide Tenant a new key until such time as Tenant cures all defaults under the Lease. No such alteration of locks or other security devices and no removal or other exercise of dominion by Landlord over the property of Tenant or others at the Leased Premises shall be deemed unauthorized or constitute a conversion, Tenant hereby consenting, after any Event of Default, to the aforesaid exercise of dominion over Tenant's property within the Leased Premises. All claims for damages by reason of such re-entry and/or repossession and/or alteration of locks or other security devices are hereby waived, as are all claims for damages by reason of any distress warrant, forcible detainer proceedings, sequestration proceedings or other legal process. Tenant agrees that any re-entry by Landlord may be pursuant to judgment obtained in forcible detainer proceedings or other legal proceedings or without the necessity for any legal proceedings, as Landlord may elect, and Landlord shall not be liable in trespass or otherwise.

Notwithstanding any provision to the contrary contained herein, upon the occurrence of an Event of Default in payment of rent, Landlord shall not be obligated to give any notice (written or oral) to vacate the Leased Premises prior to Landlord's instituting proceedings in Forcible Entry or Detainer, Tenant hereby waiving (to the extent legally permissible) any and all notices to vacate, and/or demand for possession, required under common law or New Mexico state law, as same presently exists or may be hereafter amended (or any subsequent similar statute relating to notice prior to instituting such proceedings), Tenant hereby agreeing that such proceedings in Forcible Entry or Detainer may be instituted by Landlord at any time a default in payment of rent remains uncured.

If Tenant should fail to make any payment or cure any default hereunder within the time herein permitted, Landlord, without being under any obligation to do so and without thereby waiving such default, may make such payment and/or remedy such other default for the account of Tenant (and enter the Leased Premises for such purpose), and thereupon Tenant shall be obligated to, and hereby agrees to pay Landlord, upon demand, all costs, expenses and disbursements incurred by Landlord in taking such remedial action.

In the event of termination of this Lease or of Tenant's right to possession of the Leased Premises or repossession of the Leased Premises for an Event of Default, Landlord agrees to take the following steps: (1) Landlord will notify at least one (1) commercial real estate broker of the availability of the Leased Premises, (2) Landlord will notify its internal leasing staff in writing of the availability of the Leased Premises, and (3) Landlord will post a "For Lease" sign in the window of the Leased Premises, but Landlord shall have no obligation to relet the Leased Premises, or any portion thereof, unless the lease terms, tenant and use and purpose are satisfactory to Landlord, and Landlord shall not be responsible for failure or inability to collect rent in the event the Leased Premises are re-let.

Section 16.03. In the event Landlord elects to terminate the Lease by reason of an Event of Default, then (except as otherwise provided in the succeeding paragraph) notwithstanding such termination, Tenant shall be liable for and shall pay to Landlord, at Houston, Harris County, Texas, the sum of all rent and other indebtedness accrued to the date of such termination, plus, as damages, an amount equal to the present value (computed as of the date of any such termination using a discount factor equal to six percent [6%] per annum) of the difference between the amount stated in (1) hereafter and the amount stated in (2) hereafter as follows: (1) the total rent (Minimum and Percentage, computed as stated in Section 16.04 below) plus the Common Area Payment, Tax Payment, Insurance Payment, and Mall Payment (if any) (using such sums, if any, for the year of such termination as the basis for determining the amount thereof which would have been due each year thereafter for the remaining portion of the lease term had it not been terminated), all such rent and other charges being computed for the remaining portion of the lease term (had such term not been terminated by Landlord prior to the date of expiration stated in Article III), and (2) the then fair market rental value of the Leased Premises for such period (including the amount of the Common Area Payment, Tax Payment and Insurance Payment [if any] which reasonably could be obtained by Landlord through reletting the Leased Premises).

In the event Landlord elects to terminate Tenant's right to possession of the Leased Premises without terminating this Lease, Landlord may hold Tenant liable for all rent and other indebtedness accrued to the date of such termination, plus such rent and other indebtedness as would otherwise have been required to be paid by Tenant to Landlord during the period following termination of Tenant's right to possession of the Leased Premises, measured from the date of such termination by Landlord until the date which would have been the date of expiration of the term as stated in Article III (had Landlord not elected to terminate Tenant's right to possession on account of such Event of Default) diminished by any net sums thereafter received by Landlord through reletting the Leased Premises during said period (after deducting expenses incurred by Landlord as provided in the succeeding paragraph). Actions to collect amounts due by Tenant provided for in this paragraph of Section 16.03 may be brought from time to time by Landlord during the aforesaid period, on one or more occasions,

without the necessity of Landlord's waiting until expiration of such period; and in no event shall Tenant be entitled to any excess of rent (or rent plus other sums) obtained by reletting over and above the rent herein reserved.

In case of an Event of Default, Tenant shall also be liable for and shall pay to Landlord at Houston, Harris County, Texas, in addition to any sum provided to be paid above: (i) the reasonable costs of removing and storing Tenant's or other occupant's property, the reasonable costs of repairing the Leased Premises, and all reasonable expenses incurred by Landlord in enforcing Landlord's remedies; and (ii) reasonable broker's fees incurred by Landlord in connection with reletting the whole or any part of the Leased Premises, and the costs of altering, remodeling or otherwise putting the Leased Premises into condition acceptable to a new tenant ("Relet Costs"); provided, however, that the addition of Relet Costs shall not increase Tenant's liability to Landlord beyond the liability Tenant would have incurred had the Leased Premises not been relet.

Section 16.04. For the purpose of computing Tenant's liability under this Article, the annual amount of Percentage Rent for which Tenant shall be liable after termination of the Lease or Tenant's right to possession of the Leased Premises shall be the total of all the amounts Tenant was obligated to pay as Percentage Rent during the entire period before such termination divided by the number of the Lease Years in such entire time; Tenant will also pay a pro rata part of such annual Percentage Rent, based upon the length of time between the previous payment of Percentage Rent and the date of termination; and upon such termination Tenant will be obligated to submit to Landlord a statement accurately showing Gross Sales made since submission of its last previous statement, together with such additional supporting financial records as Landlord may require.

Section 16.05. Except as otherwise expressly provided in this Lease, in the event of any default by Landlord, Tenant's exclusive remedy shall be an action for damages (Tenant hereby waiving the benefit of any laws granting it a lien upon the property of Landlord and/or upon rent due Landlord), but prior to any such action Tenant will give Landlord written notice specifying such default with particularity, and Landlord shall thereupon have a reasonable period (which, except in the case of an "emergency" [as defined in Section 9.02], shall be not more than thirty (30) days), in which to commence to cure any such default. Unless and until Landlord fails so to commence to cure any default after such notice or having so commenced thereafter fails to exercise reasonable diligence to complete such curing, Tenant shall not have any remedy or cause of action by reason thereof. All obligations of Landlord hereunder will be construed as independent covenants, not conditions; and all such obligations will be binding upon Landlord only during the period of its possession of the Shopping Center and not thereafter.

Section 16.06. In any action or proceeding to enforce any provision hereof which proceeds to final judgment in a court of law, the prevailing party shall be entitled to reasonable attorney's fees.

## ARTICLE XVII

### Non-Waiver

Section 17.01. Neither acceptance of rent (or any portion thereof) or any other sums payable by Tenant hereunder (or any portion thereof) by Landlord nor failure by Landlord or Tenant to complain of any action, non-action or default of the other shall constitute a waiver as to any breach of any covenant or condition contained herein nor a waiver of any of Landlord's or Tenant's rights hereunder. Waiver by Landlord or Tenant of any right for any default of the other shall not constitute a waiver of any right for either a prior or subsequent default of the same obligation or for any prior or subsequent default of any other obligation. No right or remedy of Landlord or Tenant hereunder or covenant, duty or obligation hereunder shall be deemed waived unless such waiver be in writing, and signed by the party against whom the waiver is sought to be enforced.

ARTICLE XVIII

Landlord-Tenant Relation

Section 18.01. The relation created by this Lease Contract is that of landlord and tenant. Neither the provisions for Percentage Rent nor any other provision of this Lease shall be construed in such a way as to constitute Landlord and Tenant joint venturers or co-partners or to make Tenant the agent of Landlord or to make Landlord liable for the debts of Tenant. The provisions of this instrument relating to the Percentage Rent, if any, payable by Tenant hereunder are included solely for the purpose of providing for the payment of rental in excess of the Minimum Rent, and providing for a method whereby such additional rental is to be measured, ascertained and paid.

ARTICLE XIX

Eminent Domain

Section 19.01. If there shall be taken during the term of this Lease all of the Leased Premises, by any authority having the power of eminent domain, then and in that event, the term of this Lease shall cease and terminate, and the date of such termination shall be the earlier of: (i) the date upon which possession shall be tendered to such authority by Landlord, or (ii) the date upon which possession is taken by such authority. If a lesser part of the Leased Premises should be so taken, Landlord may elect to terminate this Lease or to continue this Lease in effect, but if Landlord elects to continue this Lease in effect, the Minimum Rent and Additional Rent (to the extent computed based upon the area of the Leased Premises) (but not the Percentage Rent) shall be reduced in proportion to the area of the Leased Premises so taken. Immediately upon the taking of possession of the portion of the Leased Premises taken by the condemning authority, Percentage Rent shall be computed with reference to the proportionately reduced Minimum Rent provided for under the preceding sentence rather than the amount of Minimum Rent set forth in Section 4.01 above. When any such reduction in Minimum Rent has been computed by Landlord, Landlord shall notify Tenant as to the amount of such Minimum Rent and such sum shall be due and payable by Tenant to Landlord in accordance with the provisions of Article IV relating to the time and manner of Tenant's payment of Minimum Rent. At the request of Landlord, Tenant will execute a letter or other memorandum setting forth the amount of such Minimum Rent payable by Tenant. In the event that Landlord has elected to continue this Lease in effect, then Landlord shall promptly restore the remaining portion of the Leased Premises so as to constitute such portion an enclosed building, with such nature of building improvements and facilities as Landlord furnished to Tenant at or prior to commencement of the lease term. Such restoration work shall be performed by Landlord within a reasonable period of time with reasonable allowances for Force Majeure. Neither the restoration work, if any, by Landlord with respect to the Leased Premises nor the restoration work, if any, by Landlord with respect to any other portion of the Shopping Center shall constitute an eviction or disturbance of Tenant's use and possession of the Leased Premises or Shopping Center or a breach by Landlord of any of its obligations hereunder or render Landlord liable for damages or entitle Tenant to be relieved from any of its obligations hereunder (with the exception of the aforesaid proportionate reduction in Minimum Rent) or grant Tenant any right of off-set or recoupment. In the event that any condemnation proceeds, whether by way of compensation or damages, are collected by any party holding a lien on Landlord's interest in the Leased Premises, such proceeds shall not be deemed to have been collected by Landlord, whether or not the payment to such lienholder is with the approval of Landlord. Notwithstanding the foregoing, to the extent that Tenant cannot and does not use the Leased Premises during any repair or reconstruction following a condemnation of any part of the Leased Premises, Minimum Rent and all Additional Rent shall abate proportionately. In addition, if during the final year of the Lease term more than ten percent (10%) of the Leased Premises is taken, or if at any time repairs and/or reconstruction following a condemnation of any portion of the Leased Premises takes longer than one hundred eighty (180) days from the date of the taking, Tenant may terminate this Lease at any time between the one hundred eighty-first (181st) day and the date Landlord completes repairs and/or reconstruction.



Section 19.02. Whether or not any portion of the Leased Premises may be taken by such authority, Landlord may nevertheless elect to terminate this Lease or to continue this Lease in effect in the event any portion of any building in the Shopping Center or more than ten percent (10%) of the Common Area of the Shopping Center be taken by such authority.

Section 19.03. All sums awarded or agreed upon between Landlord and the condemning authority for the taking of the fee or the leasehold interest, whether as damages or as compensation, will be the property of Landlord. Tenant hereby assigns to Landlord all proceeds, whether by way of compensation or damages, otherwise payable to Tenant for the leasehold interest by reason of such taking. Tenant further grants to Landlord the exclusive authority to negotiate with such authority for payment both with respect to the interest of Landlord and the interest of Tenant in the Leased Premises and Tenant agrees that the authority having the power of eminent domain shall cause all checks and drafts issued by it in connection with any such taking of the fee or leasehold estate, whether as compensation or as damages, to be issued payable to the order of Landlord above or payable to the order of Landlord and "Landlord's Mortgagee" (as hereinafter defined). Upon request of Landlord, Tenant agrees to forthwith execute such instrument or instruments as Landlord may reasonably request for the purpose of evidencing the cessation of Tenant's interest in such portion of the Leased Premises as is taken by such authority and the continued effectiveness of this Lease as to the balance of the Leased Premises not taken. Any amounts specifically awarded or agreed upon by the Tenant and the condemning authority for the taking of Tenant's Removable Trade Fixtures, or any interest of Tenant other than Tenant's leasehold interest, shall be the property of Tenant.

Section 19.04. If this Lease should be terminated under any provision of this Article, rental and other sums due and payable by Tenant hereunder shall be payable up to the termination date, and Landlord will refund to Tenant an equitable portion of any such rental and other sums paid in advance but not yet earned by such date.

Section 19.05. In the event that any authority having the power of eminent domain requests that Landlord convey to such authority all or any portion of the Shopping Center or all or any portion of the Leased Premises, Landlord shall have the right to make a voluntary conveyance to such authority of all or any portion of the Shopping Center or all or any portion of the Leased Premises whether or not proceedings have been filed by such authority; and in the event of any such voluntary conveyance, it shall nevertheless for all purposes hereunder be deemed that there has been a taking by such authority of the property voluntarily conveyed by Landlord. Accordingly, all of the provisions of Sections 19.01, 19.02, 19.03 and 19.04 hereof shall be applicable notwithstanding such voluntary conveyance.

## ARTICLE XX

### Holding Over

Section 20.01. If Tenant should remain in possession of the Leased Premises after the expiration of the term of this Lease, without the execution of a new lease, then Tenant shall be deemed to be occupying the Leased Premises as a tenant from month-to-month, subject to all the covenants and obligations of this Lease, except that as liquidated damages by reason of such holding over, the amounts payable by Tenant under this Lease shall be increased such that the Minimum Rent, Percentage Rent, Tax Payment, Common Area Payment, Insurance Payment, and Mall Payment (if any) payable during such period shall be calculated by multiplying the amount payable with respect to each such respective item for the last full calendar month of the term hereof by one hundred fifty percent (150%).

Section 20.02. The above described tenancy from month-to-month may be terminated by either party upon thirty (30) days notice to the other.

Section 20.03. Any rent due after notice has been given is to be calculated according to Section 20.01 on a prorata basis. If upon notice of

termination by Landlord, Tenant tenders rent in excess of the amount due and payable pursuant to the formula in Section 20.01, and Landlord accepts such payment, the acceptance of such payment will not operate as a waiver by Landlord of the notice of termination, unless such waiver is in writing and signed by Landlord. Any such excess amounts tendered and accepted shall be promptly refunded by Landlord, after deducting therefrom any amounts owed Landlord.

#### ARTICLE XXI

##### Landlord's Mortgagee

Section 21.01. Tenant agrees that its interest under this Lease shall be subordinate to any mortgage, deed of trust or similar device now or hereafter placed upon the Leased Premises or all or any portion of the Shopping Center by Landlord if the mortgagee or beneficiary under said deed of trust or lender for whose benefit any other security device is created so elects, and, upon notice to Tenant of such election, Tenant will execute any instruments required to evidence such subordination. Likewise, such mortgagee or beneficiary under said deed of trust or lender for whose benefit any other security device is created may elect, by notice to Tenant, to make this Lease superior to such mortgage or deed of trust or other security device; and in the event of any such election, Tenant will execute any instruments required to evidence such superiority; provided however, notwithstanding that this Lease may be (or made to be) superior to such mortgage, deed of trust or other security device, the provisions of such mortgage, deed of trust or other security device relative to the rights of such mortgagee, deed of trust beneficiary or secured party with respect to proceeds arising from an eminent domain taking (including a voluntary conveyance by Landlord) and/or arising from insurance payable by reason of damage to or destruction of the Leased Premises shall be prior and superior to any contrary provisions contained in this instrument with respect to the payment or usage thereof. Notwithstanding the foregoing, Tenant shall not be required to execute any instrument subordinating its interests under this Lease unless the beneficiary under such instrument agrees in writing not to disturb Tenant's rights hereunder so long as (i) Tenant continues to perform its obligations hereunder and is not in default beyond any applicable notice and cure period, and (ii) Tenant agrees to attorn to such beneficiary.

Section 21.02. For purposes of this Article, the term "Landlord's Mortgagee" means any party holding a mortgage or deed of trust on the Leased Premises or any part thereof or all or any portion of the Shopping Center who has given Tenant written notice that such party holds such lien or deed of trust together with notice of the post office address of such Landlord's Mortgagee. A lien held by a Landlord's Mortgagee on the Leased Premises or any portion thereof or Shopping Center or any portion thereof is herein referred to as a "Landlord's Mortgagee".

Section 21.03. If the Leased Premises are at any time during the term of this Lease subject to a Landlord's Mortgage then, in any instance in which Tenant gives notice to Landlord alleging default by Landlord in performance of any covenant or obligation under this Lease, Tenant will also simultaneously give a copy of such notice to Landlord's Mortgagee (at the post office address as to which such Landlord's Mortgagee shall have given Tenant notice pursuant to Section 21.02, above) and the Landlord's Mortgagee shall have the right (but no obligation) to cure or remedy such default of Landlord during the same time that is permitted to Landlord hereunder for the remedying or curing of such default, and Tenant will accept such curative or remedial action taken by a Landlord's Mortgagee with the same effect as if such action had been taken by Landlord, and Tenant shall not seek damages from Landlord or any other relief by reason of any such default of Landlord if Landlord's Mortgagee shall have cured or remedied such default within the time allowed herein.

Section 21.04. Landlord and Tenant each covenant and agree that so long as there is in effect any collateral assignment of Landlord's rights under this Lease to any Landlord's Mortgagee, none of the following actions shall be taken without the prior written consent of Landlord's Mortgagee in each instance:

(a) This Lease will not be modified, altered or amended in any way (except as may be permitted in any Landlord's Mortgage);

(b) Landlord and Tenant will not agree to a cancellation of this Lease, nor will Tenant surrender its rights hereunder to Landlord (except in instances wherein the right to do so is expressly granted to Tenant under the other terms and provisions of this Lease);

(c) Landlord will not convey its fee interest in the Leased Premises to Tenant in a manner which will result in merger, nor take any other action which would result in merger, of Landlord's estate in the Leased Premises with Tenant's leasehold under this Lease, unless, at the time of such conveyance, Tenant assumes in writing any unpaid balance owing and to become owing to any Landlord's Mortgagee which is secured by a collateral assignment of this Lease; but this does not prohibit an assignment of Landlord's estate to Tenant by assignment specifically made subject to this Lease; and

(d) Tenant will not prepay and Landlord will not accept prepayment of any installment or payment of rent more than thirty (30) days in advance of the due date thereof.

The provisions of this Section shall be for the benefit of Landlord, Tenant and each Landlord's Mortgagee, and shall be enforceable by any one or more of such parties.

Section 21.05. Landlord and Tenant shall execute and deliver to each other, at such time or times as either Landlord or Tenant may request, a certificate stating:

(a) Whether or not the Lease is in full force and effect;

(b) Whether or not the Lease has been modified or amended in any respect, and submitting copies of such modifications or amendments, if any;

(c) Whether or not there are any existing defaults under this Lease to the knowledge of the party executing the certificate, and specifying the nature of such defaults, if any; and

(d) Such other information as may be reasonably requested.

The aforesaid certificate(s) shall be delivered to Landlord or Tenant, as the case may be, promptly upon receipt of a written request therefor, but in no event more than ten (10) days following receipt of such request. Failure by either party to timely deliver such certificate(s) shall constitute an Event of Default hereunder and entitle the other party to exercise any remedies permitted under the terms of this Lease without the necessity of further notice to the defaulting party (notwithstanding any provision to the contrary contained in Article XVI).

## ARTICLE XXII

### Additional Rent

Section 22.01. In addition to and separate from the Minimum Rent and Percentage Rent, Tenant shall pay to Landlord as additional rent a "Common Area Payment", "Tax Payment", and "Insurance Payment" (as such quoted terms are hereinafter defined). For purposes of this Lease, the following terms shall have the hereinafter indicated meaning:

A. The phrase "Common Area Operating Costs" shall mean, for each calendar year (or portion thereof) during the term of this Lease, the aggregate of all costs, expenses and liabilities of every kind or nature paid or incurred by Landlord (to the extent that Landlord, in its good faith judgment, regards it as reasonably necessary or appropriate to provide the services and materials hereafter referred to and to pay and incur the costs, expenses and liabilities hereafter referred to) in connection with: sweeping, cleaning, removing debris,

snow and ice from, maintaining, restriping and repairing the Common Area; lighting the Common Area (including replacement of bulbs and ballasts, and painting, repairing and maintaining of light standards); providing project identification signs; providing signs and/or personnel for assisting in traffic control and management at the Common Area; constructing, operating and repairing and maintaining any on-site or off-site utilities necessary or appropriate for the operation of the Common Area; providing and maintaining planting and landscaping with respect to the Common Area; providing security services with respect to the Common Area; operating any loudspeakers or other equipment supplying music; providing public liability and property damage insurance with respect to the Common Area; utilities charges for any services to the Common Area; repairing and maintaining sidewalks in the Common Area (including, without limitation, periodic steam cleaning thereof); plus all other reasonable and customary costs and expenses of every kind or nature paid or incurred by Landlord relative to operating, managing and equipping the Common Area including, without limitation, subdivision maintenance fees or dues; property owners association fees or dues and similar charges, annual charges for reasonable reserves established by Landlord for future replacements or improvements to the Common Area (inclusive of periodic new blacktopping of the parking areas) plus an administrative fee of fifteen percent (15%) of the aggregate of all of the aforesaid costs and expenses and liabilities (including, without limitation, the aforesaid reserve) paid or incurred by Landlord. Notwithstanding any term or provision to the contrary contained herein, in no event shall Common Area Operating Costs include any "Capital Expense," which is hereby defined as any single repair, replacement or renewal project that costs more than \$10,000.00.

B. The word "Taxes", as used herein, shall mean all taxes, assessments, impositions, levies, charges, excises, fees, licenses and other sums (whether now existing or hereafter arising, whether foreseen or unforeseen and whether under the present system of real estate taxation or some other system), levied, assessed, charged or imposed by any governmental authority or other taxing authority or which accrue on the Shopping Center for each calendar year (or portion thereof) during the term of this Lease, including, without limitation, professional fees and expenses incurred by Landlord for ad valorem tax consultants or tax-rendering services (as long as charges for such services do not exceed tax savings achieved thereby) and all penalties, interest and other charges (with respect to Taxes) payable by reason of any delay in or failure or refusal of Tenant to make timely payment as required under this Lease. In no event shall the word "Taxes" be deemed to include any of Landlord's income taxes or the estate, inheritance, or gift taxes of any party "Landlord".

C. The phrase "Insurance Premiums" shall mean the total annual insurance premiums which accrue on all fire and extended coverage insurance, boiler insurance, public liability and property damage insurance, rent insurance and other insurance which, from time to time, may at Landlord's election be carried by Landlord with respect to the Shopping Center during any applicable calendar year (or portion thereof) occurring during the term of this Lease; provided, however, in the event that during any such calendar year all or any part of such coverage is written under a "blanket policy" or otherwise in such manner that Landlord was not charged a specific insurance premium applicable solely to the Shopping Center, then in such event, the amount considered to be the Insurance Premium with respect to such coverage for such calendar year shall be that amount which would have been the annual insurance premium payable under the rates in effect on the first day of such applicable calendar year for a separate Texas Standard Form insurance policy generally providing such type and amount of coverage (with a deductible amount of not less than \$10,000.00) with respect to the Shopping Center (considering the type of construction and other relevant matters) irrespective of the fact that Landlord did not actually carry such type policy. If the insurance policies maintained by Landlord with respect to the Shopping Center contain any nature of deductible feature, then Landlord, in the event of a loss to the Leased Premises, shall be responsible for the amount of the deductible.

D. The phrase "Common Area Payment" shall refer to the sum specified in Section 22.02. A., below.

E. The phrase "Tax Payment" shall refer to the sum set forth in Section 22.02. B., below.

F. The phrase "Insurance Payment" shall refer to the sum set forth in Section 22.02. C., below.

G. The phrase "Tenant's Share" as applied to Common Area Operating Costs, Taxes and Insurance Premiums shall refer to a sum calculated by multiplying the Common Area Operating Costs, Taxes and Insurance Premiums (as the case may be) by a fraction, the numerator of which is the ground floor area (in square feet) of the Leased Premises (as indicated in Section 1.01 of this Lease Contract) and the denominator of which is the aggregate leasable ground floor area (in square feet) in all buildings in the Shopping Center (whether or not actually leased) on the first day of January for the relevant calendar year for which any calculation referred to in this Article XXII is being made; provided, however, for any period less than twelve (12) full calendar months with respect to which such calculation is being made, a pro rata portion of the resulting product shall be calculated to determine Tenant's Share. Within one hundred twenty (120) days following the end of each calendar year, Landlord shall furnish Tenant a written statement setting forth the computation of Tenant's Share for the immediately preceding calendar year, which statement shall itemize Common Area Operating Costs in the manner commonly used by Landlord and shall be accompanied by copies of all paid tax receipts and insurance premium receipts. Upon fifteen (15) days prior written notice (but not more frequently than once per calendar year) Tenant shall have the right to audit Landlord's books and records relative to Common Area Operating Costs for the Shopping Center. If the results of such audit indicate that Landlord has overcharged Tenant for Tenant's Share of the Common Area Operating Costs by more than five percent (5%), Landlord shall reimburse Tenant for the reasonable costs of such audit. Additionally, Landlord shall refund to Tenant upon demand any and all amounts by which Landlord may have overcharged Tenant for Tenant's Share of Common Area Operating Costs, regardless of the amount of the overcharge.

In the event one or more third party tenants in the Shopping Center ("Major Tenants") are (i) maintaining portions of the Common Area, and/or (ii) paying real estate taxes directly to the taxing authority based on a separate rendering of said tenant's premises, and/or (iii) paying their own insurance premiums for the types of insurance identified in this Article XXII, then as to Common Area Operating Costs and/or Taxes and/or Insurance Premiums (as the case may be), the term Tenant's Share shall be amended by adjusting the denominator of the fraction referenced hereinabove by excluding therefrom the ground floor area (in square feet) of any premises in the Shopping Center leased to "Major Tenants."

Section 22.02. A. Unless and until Landlord exercises the rights set forth in Section 22.03 of this Lease, Tenant will pay Landlord the sum of \$800.00 per month, monthly in advance, for each and every month during the term of this Lease, except, however, if the lease term does not begin on the first day of a calendar month, Tenant shall pay a pro rata portion of such sum for such partial month; such applicable amount being herein referred to as the "Common Area Payment".

B. Unless and until Landlord exercises the rights set forth in Section 22.03 of this Lease, Tenant will pay to Landlord the sum of \$456.08 per month, monthly in advance, for each and every month during the term of this Lease, except, however, if the lease term does not begin on the first day of a calendar month, Tenant shall pay a pro rata portion of such sum for such partial month; such applicable amount being herein referred to as the "Tax Payment".

C. Unless and until Landlord exercises the rights set forth in Section 22.03 of this Lease, Tenant will pay to Landlord the sum of \$190.03 per month, monthly in advance, for each and every month during the term of this Lease, except, however, if the lease term does not begin on the first day of a calendar month, Tenant shall pay a pro rata portion of such sum for such partial month; such applicable amount being herein referred to as the "Insurance Payment".

Section 22.03.A. In lieu of any (or all) of the aforesaid sums referred to in Section 22.02, Landlord shall have the right, exercisable by notice from

Landlord to Tenant at any time during the term of this Lease to require Tenant to pay to Landlord as the Common Area Payment and/or Tax Payment and/or Insurance Payment a sum of money for the twelve (12) months prior to the notice and during the remainder of the term of this Lease equal to Tenant's Share of the Common Area Operating Costs, Taxes or Insurance Premiums (as the case may be). Any of the aforesaid items (Common Area Operating Costs, Taxes or Insurance Premiums) as to which Landlord shall have given such notice are collectively referred to in this Section 22.03 as "Such Costs". Landlord shall have no obligation to exercise the right herein granted, and unless and until Landlord gives Tenant notice of the exercise of such right as herein provided, Tenant shall continue to pay the aforesaid sums referred to in Section 22.02. A., 22.02. B., and 22.02. C. of this Lease in accordance with the terms thereof as to each payment for which Landlord shall not have given Tenant notice under this Section 22.03.

In the event Landlord shall have given notice to Tenant of the exercise of any of its rights under the preceding paragraph, then (with respect to any such sum as to which Landlord shall have so given notice) the following shall apply:

- (1) Landlord shall have the right, exercisable by Landlord's giving notice to Tenant from time to time during the term of this Lease (but not more often than twice in any one [1] calendar year), to estimate Tenant's Share of any of Such Costs for the relevant calendar year indicated by Landlord, whereupon, commencing on the date designated by Landlord and continuing for the balance of the period during the term of this Lease indicated by Landlord, Tenant shall pay Landlord on the first day of each month, monthly in advance, one-twelfth (1/12th) of the amount(s) so estimated by Landlord.
- (2) At the end of the calendar year occurring during the term of this Lease during which Landlord shall have given Tenant notice of the exercise of any of its rights set forth in this Section 22.03 (and subsequent to the expiration or other termination of this Lease if such occurs on a date other than the last day of a calendar year), Landlord will give Tenant notice of the total amount(s) paid by Tenant for the relevant calendar year together with the actual amount of Tenant's Share of any of Such Costs for such calendar year. If the actual amount of Tenant's Share of any of Such Costs with respect to such period exceeds the aggregate amount(s) previously paid by Tenant with respect thereto during such period, Tenant shall pay to Landlord the deficiency within ten (10) days following notice from Landlord; however, if the aggregate amount(s) previously paid by Tenant with respect thereto exceeds Tenant's Share of any of Such Costs for such period, then, at Landlord's election, such surplus (net of any amounts then owing by Tenant to Landlord) shall be credited against the next ensuing installment of any of Such Costs due hereunder by Tenant, or Landlord may refund such net surplus to Tenant. Should Tenant question the accuracy of any Such Costs, Tenant's right to dispute any Such Costs shall be conditioned upon payment to Landlord of Tenant's Share thereof prior to its right to contest any Such Costs with an adjustment thereafter, if necessary.

B. Tenant's obligation to pay Tenant's Share of Common Area Operating Costs is subject to the limitation that in no event shall Tenant's Share of all Common Area Operating Costs (with the sole exceptions of costs for electricity and security services) increase by more than seven percent (7%) per year on a cumulative basis.

Section 22.04. Except with respect to taxes excluded from the definition of "Taxes" contained in Section 22.01.B., if there is presently in effect or hereafter adopted any nature of sales tax or use tax or other tax on rents or other sums received by Landlord under this Lease (herein referred to as "Rent Sales Tax"), then in addition to all rent and other payments to be made by Tenant as provided above, Tenant will also pay Landlord a sum equal to the amount of such Rent Sales Tax.

ARTICLE XXIII

Notice

Section 23.01. Any notice which may or shall be given under the terms of this Lease shall be in writing and shall be either delivered by hand or sent by United States Registered or Certified Mail, adequate postage prepaid, if for Landlord to its President, addressed to his attention, P.O. Box 924133, Houston, Texas 77292-4133, if for Tenant, to it at 3001 East President George Bush Highway, Ste. 200, Richardson, Texas 75082. Either party's address may be changed from time to time by such party by giving notice as provided above, except that the Leased Premises may not be used by Tenant as the sole notice address. No change of address of either party shall be binding on the other party until notice of such change of address is given as herein provided. A post office receipt for registration of such notice or signed return receipt shall be conclusive that such notice was delivered in due course of mail if mailed as provided above. For purposes of the calculation of various time periods referred to herein, notice delivered by hand shall be deemed received when delivered to the place for giving notice to a party referred to above and notice mailed in the manner provided above shall be deemed completed upon the earlier to occur of (i) actual receipt as indicated on the signed return receipt, or (ii) three (3) days after posting as herein provided. Finally, any written notice addressed as provided hereinabove and actually received by the addressee, shall constitute sufficient notice for all purposes under this Lease. Any notice may be given by legal counsel or other authorized representative of the party required or permitted to give such notice.

ARTICLE XXIV

Tenant's Signs

Section 24.01. Tenant shall be responsible for the costs and installation of a building fascia sign and a sign under the canopy of the building of which the Leased Premises are a part. Sign plans shall be prepared by Tenant in accordance with the sign criteria of the Shopping Center and submitted to Landlord for Landlord's prior written approval. Except as approved by Landlord in writing, no sign, placard or advertisement, or exterior or interior window sign, placard or advertisement shall be painted, erected or displayed and no awnings shall be erected. Any interior sign which is not designed or reasonably calculated to be seen from outside the Leased Premises may be placed and displayed by Tenant, without Landlord's further consent. Tenant shall cause Tenant's exterior sign to be placed on a time clock and photoelectric cell device such that the electricity illuminating such sign shall keep Tenant's electric signs on from dusk until 11:00 o'clock P.M., every day during the lease term. Landlord hereby approves Tenant's existing signs at the Leased Premises.

ARTICLE XXV

Terminology and Miscellaneous

Section 25.01. With respect to terminology in this Lease, each number (singular or plural) shall include all numbers, and each gender (male, female or neuter) shall include all genders. If any provision of this Lease shall ever be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions of the Lease, but such other provisions shall continue in full force and effect.

The titles of the Articles in this Lease shall have no effect and shall neither limit nor amplify the provisions of the Lease itself. This Lease shall be binding upon and shall accrue to the benefit of Landlord, its successors and assigns, and Tenant, its successors and assigns (or heirs, executors, administrators and assigns, as the case may be); however, this clause does not constitute a consent by Landlord to any assignment by Tenant, but instead refers only to those instances in which an assignment by Tenant is hereafter made in strict compliance with Article VIII above, or in the case of a deceased natural person Tenant, refers to the instances previously referred to in this sentence

and also circumstances in which title to Tenant's leasehold estate under this Lease passes, after the demise of Tenant, pursuant to Tenant's will or the laws of intestate succession. The words "hereof," "herein," "hereunder," "hereinafter" and the like refer to this entire instrument, not just to the specific article, section or paragraph in which such words appear.

Section 25.02. In any circumstances where Landlord is permitted to enter upon the Leased Premises during the lease term, whether for the purpose of curing any default of Tenant, repairing damage resulting from fire or other casualty or an eminent domain taking or is otherwise permitted hereunder or by law to go upon the Leased Premises, no such entry shall constitute an eviction or disturbance of Tenant's use and possession of the Leased Premises or a breach by Landlord of any of its obligations hereunder or render Landlord liable for damages for loss of business or otherwise or entitle Tenant to be relieved from any of its obligations hereunder or grant Tenant any right of off-set or recoupment or other remedy except as otherwise expressly set forth herein; and in connection with any such entry incident to performance of repairs, replacements, maintenance or construction, all of the aforesaid provisions shall be applicable notwithstanding that Landlord may elect to take building materials in, to or upon the Leased Premises that may be required or utilized in connection with such entry by Landlord.

Section 25.03. Intentionally Omitted.

Section 25.04. Intentionally Omitted.

Section 25.05. In all instances where either party is required hereunder to pay any sum or do any act at a particular indicated time or within an indicated period, it is understood that time is of the essence.

Section 25.06. The obligation of Tenant to pay all rent and other sums hereunder provided to be paid by Tenant and the obligation of Tenant to perform Tenant's other covenants and duties hereunder constitute independent, unconditional obligations to be performed at all times provided for hereunder, save and except only when an abatement thereof or reduction therein is hereinabove expressly provided for and not otherwise. Except as otherwise expressly permitted in this Lease, Tenant waives and relinquishes all rights which Tenant might have to claim any nature of lien against or withhold, or deduct from or off-set against any rent and other sums provided hereunder to be paid Landlord by Tenant. Except as otherwise expressly permitted in this Lease, Tenant waives and relinquishes any right to assert, either as a claim or as a defense, that Landlord is bound to perform or is liable for the nonperformance of any implied covenant or implied duty of Landlord not expressly herein set forth.

Section 25.07. Under no circumstances whatsoever shall either party ever be liable hereunder for consequential damages or special damages suffered by the other party. The term "Landlord" shall mean only the owner, for the time being of the Shopping Center, and in the event of the transfer by such owner of its interest in the Shopping Center, such owner shall thereupon be released and discharged from all covenants and obligations of Landlord thereafter accruing (but not those then accrued), but such covenants and obligations shall be binding during the lease term upon each new owner for the duration of such owner's ownership.

Section 25.08. All monetary obligations of Landlord and Tenant (including, without limitation, any monetary obligation of Landlord or Tenant for damages for any breach of the respective covenants, duties or obligations of Landlord or Tenant hereunder) are performable exclusively in Houston, Harris County, Texas.

Section 25.09. In the event of any proposed assignment of this Lease or subletting (in whole or in part) of the Leased Premises or grant of any concession or license within the Leased Premises or allowance of any other nature of occupancy rights within the Leased Premises (any such assignment or subletting or grant of a license or concession or other occupancy rights being subject to the provisions of Article VIII, above) then notwithstanding that the prior express written permission of Landlord to any of the aforesaid transactions may have been obtained, if the rent due and payable by a sublessee under any such



permitted sublease (or a combination of the rent payable under such sublease plus any bonus or other consideration therefor or incident thereto), such previously mentioned amounts payable to be determined on a per square foot basis, exceeds the hereinabove provided Minimum Rent payable under this Lease Contract (determined on a per square foot basis) or if with respect to a permitted assignment, permitted license or other transfer by Tenant permitted by Landlord, the consideration (determined on a per square foot basis) payable to Tenant by the assignee, licensee or other transferee exceeds the Minimum Rent payable under this Lease Contract (determined on a per square foot basis), then Tenant shall be bound and obligated to pay Landlord all such excess rental and other excess consideration within ten (10) days following receipt thereof by Tenant from such sublessee, assignee, licensee or other transferee, as the case might be. In addition to the foregoing, in the event of any proposed assignment of this Lease or subletting (in whole or in part) of the Leased Premises or grant of any concession or license within the Leased Premises or allowance of any other nature of occupancy rights within the Leased Premises (any such assignment or subletting or grant of a license or concession or other occupancy rights being subject to the provisions of Article VIII above), then Tenant acknowledges that in addition to any other rights of Landlord set forth in this Lease or at law, as a condition to Landlord's granting such consent (if Landlord does, in fact, consent to any such proposed assignment, subletting, grant concession or other occupancy rights, it being acknowledged by Tenant that Landlord is under no obligation to so consent), Landlord may require an increase in the Minimum Rent payable hereunder (or an annual basis for each year during the term hereof remaining after Landlord grants such consent) equal to the sum of (i) the annual Minimum Rent payable pursuant to the provisions of Section 4.01 of this Lease for the remainder of the term of this Lease plus (ii) the amount of Percentage Rent payable by Tenant pursuant to the terms of Section 4.02 of this Lease for the immediately preceding Lease Year (or if no such Percentage Rent was payable pursuant to the terms of Section 4.02 of this Lease for such immediately preceding Lease Year, then the amount of Percentage Rent payable for the last Lease Year for which such Percentage Rent was so payable).

Section 25.10. Tenant hereby acknowledges that late payment by Tenant to Landlord of rent or any other sums due under this Lease will cause Landlord to incur various expenses not contemplated by this Lease, the exact amount of which are presently difficult to ascertain. Accordingly, if any payment of Minimum Rent, Percentage Rent or any other sum due from Tenant under this Lease shall not be received by Landlord within five (5) days of the date due, then, in addition to such required payment, Tenant shall also pay to Landlord a "Late Charge" equal to five cents (\$.05) for each One Dollar (\$1.00) so past due. Landlord and Tenant agree that such Late Charge represents a fair and reasonable estimate of the expenses that Landlord will incur by reason of such late payment by Tenant. Acceptance of such Late Charge by Landlord shall not constitute a waiver of Tenant's default with respect to any such past due amounts, nor prevent Landlord from exercising any other rights and remedies granted to Landlord under this Lease or at law or in equity. Such Late Charge shall constitute additional rental payable by Tenant under this Lease and is in addition to, and separate from, the Minimum Rent, Percentage Rent and other charges payable under this Lease by Tenant.

Section 25.11. So long as Tenant has not been wrongfully or constructively evicted from the Leased Premises, the doctrine of independent covenants will apply in all matters relating to this Lease including, without limitation, all obligations of Landlord and Tenant to perform their respective obligations under this Lease.

Section 25.12. Tenant has inspected the Leased Premises and accepts them in their existing condition, on an "As-Is" basis, subject to performance by Landlord of its obligations under the Construction Rider, if any, attached hereto. Tenant hereby waives and relinquishes any right to assert, as either a claim or a defense, that Landlord is bound to perform or is liable for the non-performance of any implied covenant or implied duty of Landlord not expressly set forth herein. Tenant waives any implied warranty of Landlord that the Leased Premises are suitable for their intended commercial purpose. Tenant agrees to perform all of its Lease obligations (including without limitation, the obligation to pay rent), notwithstanding an alleged breach by Landlord of any

such implied warranty. Tenant agrees that Landlord shall incur no liability to Tenant by reason of any defect in the Leased Premises, whether apparent or latent.

Section 25.13. If this Lease is executed by more than one person or entity as "Tenant", each such person or entity shall be jointly and severally liable hereunder. It is expressly understood that any one of the parties who have executed this Lease as "Tenant" (herein individually referred to as "Signatory") shall be empowered to execute any modification, amendment, exhibit, floor plan, or other document ("Future Instrument") and bind each of the Signatories who has executed this Lease regardless of whether each Signatory, in fact, executes such Future Instrument.

Section 25.14. Weingarten Realty Investors (the "trust") is an unincorporated trust organized under the Texas Real Estate Investment Trust Act. Neither the shareholders of the trust, nor its trust managers, officers, employees or other agents are personally, corporately or individually liable for any debt, act, omission or obligation of the trust, and all persons having claims of any kind against the trust must look solely to the property of the trust for the enforcement of their rights.

#### ARTICLE XXVI

##### Tenant's Bankruptcy

Section 26.01. Landlord and Tenant agree that if Tenant ever becomes the subject of a voluntary or involuntary bankruptcy, reorganization, composition, or other similar type proceeding under the Federal Bankruptcy Laws, as now enacted or hereafter amended, then "adequate protection" of Landlord's interest in the Leased Premises pursuant to the provisions of Sections 361 and 363 (or their successor sections) of the Bankruptcy Code, 11 U.S.C. Paragraph 101 et seq. (such Bankruptcy Code as amended from time to time being herein referred to as the "Bankruptcy Code") prior to assumption and/or assignment of the Lease by Tenant shall include, but not be limited to all (or any part) of the following:

(a) The continued payment by Tenant of all Minimum Rent, Percentage Rent and all other sums due and owing under this Lease; the performance of all other covenants and obligations under this Lease by Tenant; and

(b) The hiring of security guards to protect the Leased Premises if Tenant abandons and/or ceases operations; such obligation of Tenant only to be effective so long as Tenant remains in possession and control of the Leased Premises to the exclusion of Landlord.

Section 26.02. Intentionally Omitted.

Section 26.03. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code, shall be deemed without further act or deed to have assumed all of the obligations of Tenant arising under this Lease on and after the effective date of such assignment. Any such assignee shall, upon demand by Landlord, execute and deliver to Landlord an instrument confirming such assumption of liability.

Section 26.04. This is a lease of real property in a "shopping center" within the meaning of Section 365(b)(3) of the Bankruptcy Code.

Section 26.05. Notwithstanding anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated as "rent", shall constitute "rent" for the purposes of Section 502(b)(7) of the Bankruptcy Code.

Section 26.06. Intentionally Omitted.

Section 26.07. If Tenant assumes this Lease and proposes to assign the same pursuant to the provisions of the Bankruptcy Code (the "Bankruptcy Code") to any person or entity who shall have made a bona fide offer to accept an

assignment of this Lease on terms acceptable to the Tenant, then notice of such proposed offer/assignment, setting forth (i) the name and address of such person or entity, (ii) all of the terms and conditions of such offer, and (iii) the adequate assurance to be provided Landlord to assure such person's or entity's future performance under this Lease, including, without limitation, the assurance referred to in Section 365(b)(3) of the Bankruptcy Code, shall be given to Landlord by Tenant no later than twenty (20) days after receipt by Tenant, but in any event no later than ten (10) days prior to the date that Tenant shall make application to a court of competent jurisdiction for authority and approval to enter into such assumption and assignment, and Landlord shall thereupon have the prior right and option, to be exercised by notice to Tenant given at any time prior to the effective date of such proposed assignment, to accept an assignment of this Lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such persons or entity, less any brokerage commissions which may be payable out of the consideration to be paid by such person for the assignment of this Lease.

ARTICLE XXVII

Existing Lease

Section 27.01. The parties hereby acknowledge the existence of a Lease between them dated August 12, 1980 ("Prior Lease") for the Leased Premises. Upon the Commencement Date of this Lease, such Prior Lease shall be terminated and the parties shall have no further liabilities thereunder except for obligations which may have accrued prior to such termination date; provided that all indemnity provisions contained in the Prior Lease shall survive termination.

ARTICLE XXVIII

Condition of Lease

Section 28.01.A. This Lease is conditioned upon Tenant not being in material default of any of its obligations under the terms of the Prior Lease as of December 31, 2000. If, pursuant to any event of default under the Prior Lease prior to December 31, 2000, the Prior Lease is terminated (or alternatively, Tenant's right to possess the Leased Premises is terminated), then the term of this Lease shall never commence.

Section 28.01.B. This Lease is further conditioned upon neither Landlord nor Tenant terminating that certain First Amendment to Lease (of even date herewith) to the Prior Lease pursuant to certain provisions in the Construction Rider attached to such First Amendment to Lease. Should such First Amendment to Lease be terminated as provided in the Construction Rider attached thereto, then the term of this Lease shall never commence.

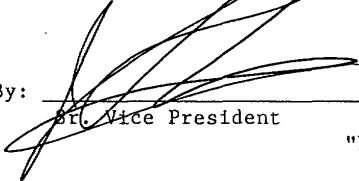
ARTICLE XXIX

Entire Agreement

Section 29.01. This instrument consisting of thirty-three (33) pages and Exhibit A, Exhibit B, Exhibit E and Exhibit X constitutes the entire agreement between Landlord and Tenant; no prior written or prior or contemporaneous oral promises or representations shall be binding. The submission of this Lease for examination by Tenant and/or execution thereof by Tenant does not constitute a reservation of or option for the Leased Premises and this Lease shall become effective only upon execution by all parties hereto and delivery of a fully executed counterpart hereof by Landlord to Tenant. This Lease shall not be amended, changed or extended except by written instrument signed by both parties hereto.

EXECUTED in multiple counterparts, each of which shall have the force and effect of an original, this the 23rd day of June, 1999.

WEINGARTEN REALTY INVESTORS

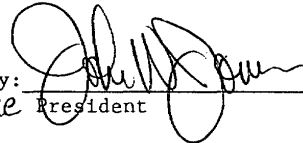
By:   
Vice President "LANDLORD"

CAFETERIA OPERATORS, L.P.

By: Furr's/Bishop's, Incorporated  
Managing General Partner

ATTEST:

  
Secretary

By:   
Vice President "TENANT"

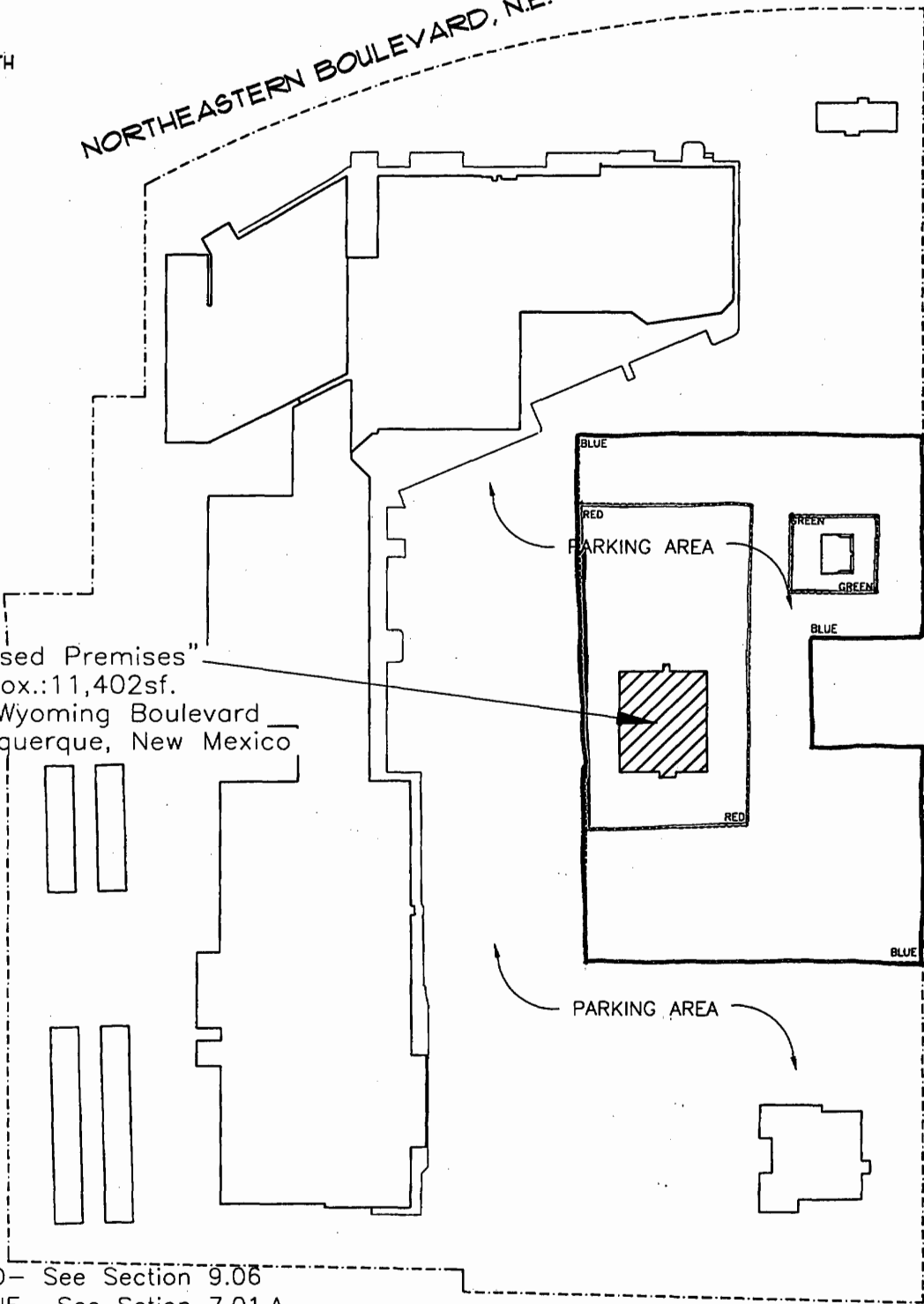
Execution Page to Shopping Center Lease



NORTHEASTERN BOULEVARD, N.E.

LESTER AVENUE, N.E.

"Leased Premises"  
Approx.: 11,402sf.  
Wyoming Boulevard  
Albuquerque, New Mexico



RED- See Section 9.06  
BLUE- See Section 7.01.A  
GREEN- See Section 7.01.A

The "Leased Premises" as shown hereon is for CAFETERIA OPERATORS, L.P.  
Subject to the terms of the Lease, Any future construction by the landlord within the Shopping Center will not affect the validity of the lease covering the Leased Premises. Landlord may elect to change the location, size, layout, or other details of any buildings, or Common Area in the Shopping Center and/or to construct other buildings in the Shopping Center and such changes will not affect the validity of the Lease covering the Leased Premises.

DATE: 06-08-99  
Rev.:

# EXHIBIT "A" WYOMING MALL

INITIAL  
*[Signature]*

Floor No: R00  
Unit No: R03  
Project No: 0179

The real property located in the County of Bernalillo, State of New Mexico, and described as follows:

All of Parcel numbered One (1) of the Wyoming Mall portion of Block "A", Snow Heights Addition to the City of Albuquerque, Bernalillo County, New Mexico, as the same is shown and designated on the plat thereof, filed in the Office of the county Clerk of Bernalillo County, New Mexico, on March 4, 1987, as Document No. 87-22248 in Plat Book Volume C33, Folio 16,

AND

All of Parcels numbered Two (2), Four (4) and Five (5) of the Wyoming Mall, comprising portion of Block "A". Snow Heights Addition to the City of Albuquerque, Bernalillo County, New Mexico, as the same as shown and designated on the amended Summary Plat thereof, filed in the Office of the County Clerk of Bernalillo County, New Mexico, on October 18, 1978, as Document No. 78-76939 in Plat Book Volume D9, Folio 11.

EXHIBIT "B"

P0179 SC  
05/08/95 JK

# ACORD CERTIFICATE OF INSURANCE

CB01 ISSUE DATE (MM/DD/YY)  
11/19/93

PRODUCER  
ALEXANDER & ALEXANDER  
OF TEXAS, INC.  
717 W. HANWOOD LOCK BOX D  
DALLAS, TX  
75201  
Gary L. Wilcher  
214-880-0321

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND  
CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE  
DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE  
POLICIES BELOW.

## COMPANIES AFFORDING COVERAGE

- COMPANY LETTER A NAT'L UNION FIRE INS CO OF PA
- COMPANY LETTER B
- COMPANY LETTER C
- COMPANY LETTER D
- COMPANY LETTER E

INSURED  
FLUOR 9/01 SHOP '93, INCORPORATED  
(SEE ATTACHED)  
6901 QUAKER AVENUE  
LUBBOCK, TX  
79413

## COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO. LTR.	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A X	GENERAL LIABILITY	RHGLX1436949-TX RHGLX1436950 (OUT OF STATE)	12/31/92	12/31/93	GENERAL AGGREGATE \$ 2,000,000
	COMMERCIAL GENERAL LIABILITY				PRODUCTS COMPLETION \$ 750,000
	CLAIMS MADE				PERSONAL & ADV. RISK \$ 750,000
	OWNERS CONTRACTORS PROF.				EACH OCCURRENCE \$ 750,000
X	\$250,000 SELF-INS RETENT. EA. OCC.				FFIE DAMAGE (Any one fire) \$ MED. EXPENSE (Any one person) \$
A X	AUTOMOBILE LIABILITY	HMCA1429423 (TX ONLY)	12/31/92	12/31/93	COMBINED SINGLE LIMIT \$ 1,000,000
	ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS				BODILY INJURY (Per Person) \$
A X	UNRENTED AUTO	HMCA1429423	12/31/92	12/31/93	BODILY INJURY (Per Occurrence) \$
A X	HOI-OWNED AUTO GARAGE LIABILITY	HMCA1429423	12/31/92	12/31/93	BODILY INJURY (Per Occurrence) \$ PROPERTY DAMAGE \$
A X	EXCESS LIABILITY	DE3008666	12/31/92	12/31/93	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
	UMBRELLA FORM OTHER THAN UMBRELLA FORM				
	WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY				STATIONARY LIMITS EACH ACCIDENT \$ DISEASE - POLICY LIMIT \$ DISEASE - EACH EMPLOYEE \$

OTHER

DESCRIPTION OF OPERATION(S), LOCATION(S), VEHICLE(S) OR SPECIAL ITEMS

#0001

CERTIFICATE HOLDER

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Gary L. Wilcher

ACORD 20-6 (7/00)

ACORD CORPORATION 1990

# ACORD. CERTIFICATE OF INSURANCE

CSR NO. [REDACTED] 11/11/93

**PRODUCER**  
 ALEXANDER & ALEXANDER  
 OF TEXAS, INC.  
 717 N. HARBWOOD LOCK BOX B  
 DALLAS, TX  
 75201  
 Gary L. Wilcher  
 214-080-0321

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND  
 CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE  
 DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE  
 POLICIES BELOW.

### COMPANIES AFFORDING COVERAGE

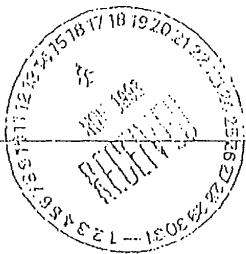
- COMPANY LETTER **A** TRAVELERS INSURANCE COMPANY
- COMPANY LETTER **B**
- COMPANY LETTER **C**
- COMPANY LETTER **D**
- COMPANY LETTER **E**

**INSURED**  
 FARR'S/BISHOP'S, INCORPORATED  
 (SEE ATTACHED)  
 6901 QUAKER AVENUE  
 LUBBOCK, TX  
 79413

### COVERAGES ARE REPLACES CERTIFICATE OF INSURANCE DATED 1/14/93

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO. LETTER	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
	<b>GENERAL LIABILITY</b> COMMERCIAL GENERAL LIABILITY CLAIMS MADE OCCUR OWNERS & CONTRACTORS PROF.				GENERAL AGGREGATE \$ PRODUCTS-COMPANY AGG. \$ PERSONAL & ADV. INJURY \$ EACH OCCURRENCE \$ FIRE DAMAGE (Any one fire) \$ MED. EXPENSE (Any one person) \$
	<b>AUTOMOBILE LIABILITY</b> ANY AUTO ALL OWNED AUTOS BORROWED AUTOS HIRED AUTOS NON-OWNED AUTOS GARAGE LIABILITY				COMBINED SINGLE LIMIT \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
	<b>EXCESS LIABILITY</b> UMBRELLA FORM OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>				[EXCLUDED LIMITS] EACH ACCIDENT \$ DISEASE—POLICY LIMIT \$ DISEASE—EACH EMPLOYEE \$
<b>A</b>	<b>ALL RISK PROPERTY</b>	092000175062192 11192	12/01/92	12/01/93	SEE ATTACHED ADD. HOUR



DESCRIPTION OF OPERATION (LOCATION) (VEHICLES) (SPECIAL ITEMS)

CERTIFICATE HOLDER

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Gary L. Wilcher

ACORD 29-3 (7/90)

ACORD COMPIATION 1990



CERTIFICATE OF INSURANCE  
ADDENDUM

INSURANCE PROVIDED: THIS POLICY, SUBJECT TO ALL OF ITS TERMS, CONDITIONS AND EXCLUSIONS, COVERS:

"ALL RISK" COVERAGE FOR BUILDINGS, STRUCTURES & PERSONAL PROPERTY INCLUDING COVERAGE EXTENSIONS FOR: EARTH MOVEMENT, FLOOD, NEWLY ACQUIRED LOCATIONS, BUSINESS INTERRUPTION, ALL AS DEFINED IN FORMS ATTACHED TO SAID POLICY AND LOCATED AS SHOWN IN THE STATEMENT OF VALUES AS ON FILE WITH THE TRAVELERS INSURANCE COMPANY. IN NO EVENT SHALL LIABILITY EXCEED ANY SPECIFIC SUBLIMIT SHOWN IN THE POLICY FOR ANY INSURED LOSS, COVERAGE OR LOCATION(S).

REPLACEMENT COST APPLICABLE.

FURR GROUP 1993  
14. 5

NAMED INSURED SCHEDULE

Furr's/Bishop's, Incorporated  
Cavalcade Holdings Inc.  
Cavalcade Group, Inc.  
Cavalcade Foods, Inc.  
Kansas Skyview Corporation  
Furr's/Bishop's Cafeterias, L.P.  
Cavalcade and Company, Inc.  
Cafeteria Operators, L.P.  
Cavalcade Development L.P.  
Furr's/Bishop's Specialty Group, L.P.  
F.B.L.P. Transportation, Inc.  
C-tel of Wisconsin, Inc.  
C-tel, Inc.  
Bob Thompson & Susan Bolin  
SGO Beverage, Inc.  
SGO Beverage of Kansas, Inc.  
RMRC, L.P.  
Colp Sales, L.P.

Trade Names:

Furr's Cafeteria's  
Furr's Family Dining  
Bishop Buffets  
Zoo-kin's  
Zoo-kin's Buffets  
Furr's Ple Kitchen  
El Paso Bar-B-Que Company  
Spirits USA (California)  
Furr's Family Buffets  
Bishop Family Buffet  
Dynamic Foods

In addition any trust created or controlled by FBI, any owned or controlled subsidiary, associated or affiliated company of Furr's/Bishop's Incorporated as now or hereafter constituted as owners, agents, charters, operators or managers.

It is agreed that "Subsidiary, associated or affiliated company" shall mean any corporation, company, partnership, or other legal entity in which the Named Insured has more than 50% interest, provided that such company is sponsored or controlled by the Named Insured.

LANDLORD'S SUBORDINATION

This Agreement between WEINGARTEN REALTY INVESTORS hereinafter called "Landlord", \_\_\_\_\_, hereinafter called "Secured Party", and \_\_\_\_\_ >(successor by assignment from >-----), hereinafter called "Tenant".

W I T N E S S E T H:

1.

By Lease Contract dated \_\_\_\_\_, Landlord has leased to NO CAPS \_\_\_\_\_, as Tenant, a storeroom in a building located at Leased Premises, Lubbock, Texas.

2.

By this instrument, subject to the terms and provisions hereinafter set forth, Landlord hereby subordinates its landlord's liens and security interests, contractual and statutory, to the security interest arising in favor of the undersigned Secured Party as to the personal property listed and described attached on Exhibit "A" (said personal property being herein referred to as the "Encumbered Removable Trade Fixtures"). The action of Landlord in hereby subordinating its landlord's liens and security interests to the security interest arising in favor of the undersigned Secured Party is, in addition to the other terms and provisions set forth in this instrument, subject to the following limitations: (i) such subordination exists with respect to only the first \$>50,000.00 indebtedness (as reduced, from time to time) owed by Tenant to Secured Party secured by Secured Party's security interest as to the Encumbered Removable Trade Fixtures; and (ii) the action of Landlord in hereby subordinating its landlord's liens and security interests to the security interest of Secured Party as to such Encumbered Removable Trade fixtures shall remain in effect only until the earlier of: >Can not extend over the term of Lease or the earlier date of cessation of such subordination referred to in Article 4 of this instrument; and accordingly, when the subordination by Landlord of its landlord's liens and security interests ceases, then the aforesaid landlord's liens and security interests of Landlord shall automatically, ipso facto, be prior and superior to the aforesaid security interest (and other rights, if any) of Secured Party with respect to such Encumbered Removable Trade Fixtures (whether or not Tenant is in default under said Lease Contract and whether or not Tenant is in default as to any obligation of Tenant to Secured Party).

By this instrument, Secured Party warrants and represents to Landlord the following: that Secured Party does not control, is not controlled by and is not under common control with Tenant; Secured Party is not controlled by any officer, director, or shareholder of Tenant; Tenant is not controlled by any officer, director, or shareholder of Secured Party; and Secured Party does not have any financial interest in Tenant nor does Tenant have any financial interest in Secured Party.

3.

In the event that Landlord shall terminate said Lease Contract or terminate Tenant's right to possession under said Lease Contract prior to the expiration of the term for which the leased premises thereunder were leased or any extension thereof, or in the event that Tenant abandons said leased premises prior to the expiration of the term for which said leased premises were leased or any extension thereof, Landlord may, in any such event at any time after such event, give written notice to the undersigned Secured Party to perform Secured Party's removal duties (hereinafter stated in Article 4) and repair duties (hereinafter stated in Article 5).

4.

The undersigned Secured Party agrees that upon receipt of such notice under Article 3, it shall remove all of said Encumbered Removable Trade Fixtures from the leased premises, whether or not Tenant is in default under any note or security agreement held by Secured Party, the aforesaid removal (and the performance of any repair duties of Secured Party as hereinafter stated in Article 5) to be completed by Secured Party within a period of >fourteen (14) days from its receipt of any such

notice (which shall be deemed received when transmitted by U.S. mail, postage prepaid, registered or certified, return receipt requested, addressed to the address of Secured Party stated below). From the date of Secured Party's receipt of such notice submitted by Landlord, Secured Party shall become liable to Landlord for Minimum Rent accruing under said Lease Contract and provided that within the period stated in the preceding sentence Secured Party shall have completely removed from the leased premises all of said Encumbered Removable Trade Fixtures and completed Secured Party's duties of repair under Article 5 below, then Secured Party shall not be liable for future Minimum Rent accruing under said Lease Contract after the date by which Secured Party shall have completed such removal and completed such repairs. In the event, however, that within the aforesaid period of time, either not all of said Encumbered Removable Trade Fixtures shall have been removed from the leased premises or Secured Party has not completed the aforesaid repair duties of Secured Party set forth in Article 5 of this instrument, then the following shall apply: (i) this subordination by Landlord shall automatically cease and thereupon the statutory and contractual liens and security interests of Landlord shall automatically be prior and superior to any and all security interests (and other rights, if any) in said Encumbered Removable Trade Fixtures in favor of the undersigned Secured Party; (ii) the undersigned Secured Party shall not thereafter remove any of said Encumbered Removable Trade Fixtures without the prior written permission of Landlord; (iii) Landlord shall have the right and option (exercisable by written notice from Landlord to Secured Party given within ninety [90] days following expiration of the period referred to in the first sentence of this Article 4) to cause Secured Party to become liable on said Lease Contract for the payment of all Minimum Rent and other sums due and payable by Tenant thereunder which have accrued since the aforesaid notice given by Landlord to Secured Party under Article 3, and to cause Secured Party to further become liable on said Lease Contract for the performance of all of the other covenants, duties, and obligations of Tenant thereunder accruing between the date of Secured Party's receipt of the aforesaid notice given by Landlord under Article 3 and the expiration of the term under said Lease Contract therein provided for (determined as if there were no termination of the lease term thereunder on account of any default of Tenant and as if said Lease Contract had been assigned by Tenant to Secured Party and assumed by Secured Party); and (iv) Landlord shall be permitted (but not obligated) to foreclose on such Encumbered Removable Trade Fixtures (without court proceedings) at any time after expiration of the aforesaid period of notice from Landlord to Secured Party upon ten (10) days' notice to both Tenant (given in the manner and to the place stated in said Lease Contract) and Secured Party (given in the manner and to the place stated above in this Article 4) advising of the time and place of said sale.

5.

In the event of removal from said leased premises of any of said Encumbered Removable Trade Fixtures by Secured Party or by Tenant (at the request of or with the consent of Secured Party), Tenant and Secured Party jointly and severally, agree to promptly repair all damage to the leased premises caused by such removal, and to leave said leased premises in a safe and sanitary condition, and, in connection with all Encumbered Removable Trade Fixtures removed by Secured Party or removed by Tenant (at the request of or with the consent of Secured Party), Secured Party and Tenant, jointly and severally, agree to indemnify and hold Landlord harmless from all loss, damage, liability, cost and expense (including attorneys' fees) which Landlord may at any time sustain or incur incident to the claim of any person, firm, corporation, or governmental agency claiming any nature of interest in or entitlement to any of said Encumbered Removable Trade Fixtures.

Weingarten Realty Investors (the "trust") is an unincorporated trust organized under the Texas Real Estate Investment Trust Act. Neither the shareholders of the trust, nor its trust managers, officers, employees or other agents are personally, corporately or individually liable for any debt, act, omission or obligation of the trust, and all persons having claims of any kind against the trust must look solely to the property of the trust for the enforcement of their rights.

EXECUTED this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in multiple counterparts, each of which shall have the force and effect of an original.

WEINGARTEN REALTY INVESTORS

TENANT (CAPS)

By: \_\_\_\_\_  
Title: Vice President

By: \_\_\_\_\_  
Title: \_\_\_\_\_

LANDLORD

TENANT

SECURED PARTY (CAPS)

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

SECURED PARTY

EXHIBIT "A"

ALL INVENTORY AND REMOVABLE (i) FURNITURE, (ii) FIXTURES AND  
(iii) EQUIPMENT (EXCLUDING ALL HEATING, VENTILATING AND AIR  
CONDITIONING EQUIPMENT).

LANDLORD INITIAL

TENANT INITIAL

SECURED PARTY INITIAL

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# Cafeteria Operators, L.P.

CF

March 12, 1999

Weingarten/Lubbock, Inc.  
2600 Citadel Plaza Dr.  
P.O. Box 924133, ATTN: President  
Houston, Texas 77292-8865

Certified Mail  
RRR #Z 553 922 768

P0125 L# CAFEØLØ1  
P0126 L# CAFEØLØ1  
P0129 L# CAFEØLØ1  
P0129 L# FURRCIØ1  
P0179 L# CAFEØLØ1

RE: Furr's/Bishop's Corporate Office  
Change of Address

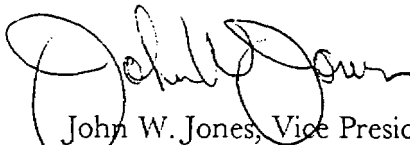
## **VERY IMPORTANT CHANGE OF ADDRESS NOTICE**

This letter shall serve as formal notice that as of March 22, 1999, the Corporate offices of Furr's/Bishop's, Inc. will be relocating to the Dallas/Fort Worth Metroplex. Therefore, please forward all Real Estate notices and correspondence to the address listed below effective on such date:

**3001 E. President George Bush Highway, Suite 200  
P./O. Box 852800 75085-2800  
Richardson, Texas 75082  
Telephone #(972)808-2923  
Facsimile #(972)808-5704**

Please contact the Real Estate Department if you have any questions. Thank you.

Sincerely,



John W. Jones, Vice President  
Real Estate Department

cc: R.E. File #107





## **EXHIBIT B-2**

FIRST AMENDMENT TO LEASE

This FIRST AMENDMENT TO LEASE ("Amendment") is made and entered into this 21st day of January, 2005 ("Effective Date"), by and between WEINGARTEN REALTY INVESTORS, ("Landlord"), and BUFFET PARTNERS, L.P. ("Tenant")

W I T N E S S E T H:

WHEREAS, Landlord and Cafeteria Operators, L.P. entered into that certain Lease Contract ("Lease") dated June 23, 1999, for a certain premises consisting of approximately 11,402 square feet of space located in Landlord's Wyoming Mall, known by street address as 2230 Wyoming Blvd. NE, Albuquerque, New Mexico (hereinafter referred to as "Existing Leased Premises"); and

WHEREAS, by Order Confirming Amended Joint Plan of Reorganization for the Debtors, as Amended dated September 17, 2003, the Lease was assigned by Cafeteria Operators, L.P. to and assumed by Tenant; and

WHEREAS, Landlord and Tenant now desire to amend the Lease as hereinafter set forth.

NOW, THEREFORE, in consideration of Ten Dollars and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual covenants contained herein, the parties hereby agree as follows:

1.

Landlord hereby recognizes Buffet Partners, L.P. as "Tenant" under the Lease as fully as if Buffet Partners, L.P. had been the original "Tenant" thereunder, and acknowledges and agrees that Buffet Partners, L.P. has succeeded to all the rights, title and interest of Tenant thereunder. So long as Tenant is not in default of the Lease beyond the applicable notice and cure period, Tenant, upon paying the rent and other charges due under the Lease and upon performing and observing all other terms and conditions of the Lease to be performed or observed by Tenant, shall peacefully and quietly have, hold and enjoy possession of the Leased Premises and the appurtenances thereto throughout the remainder of the Lease Term, as the same may be extended, without hindrance, ejection or molestation by Landlord. Landlord warrants and represents, to the best of Landlord's knowledge and belief, that as of the Effective Date, Tenant is not in default of the Lease, nor has there occurred any event that, with the passage of time, may become a default thereunder.

2.

Buffet Partners, L.P. hereby recognizes Landlord as "Landlord" under the Lease and hereby fully attorns to Landlord as fully as if Buffet Partners, L.P. had

been the original "Tenant" thereunder. Tenant warrants and represents, to the best of Tenant's knowledge and belief, that as of the Effective Date, Landlord is not in default of the Lease, nor has there occurred any event that, with the passage of time, may become a default thereunder.

3.

The relocation of the Leased Premises to the "Relocated Premises" (as hereinafter defined) is conditioned upon: (i) Landlord obtaining the final commitment from "Wal-Mart" for occupancy of a location in the Shopping Center; (ii) Landlord and Wal-Mart obtaining all approvals and permits necessary for construction of the intended improvements including the Relocated Premises; (iii) Landlord entering into binding agreements with existing occupants of the Shopping Center necessary to allow the Redevelopment Plan to be accomplished; and (iv) the final development costs being acceptable to Landlord (all the foregoing being hereinafter referred to as the "Redevelopment Plan"). The Redevelopment Plan shall be subject to Landlord's satisfaction in Landlord's sole discretion. In the event Landlord is unable to satisfy all the contingencies of the Redevelopment Plan on terms satisfactory to Landlord, Landlord shall have the right to elect not to construct the Relocated Premises upon notice to Tenant. Upon the giving of such notice, the Lease will continue in full force and effect according to the terms of the Lease as amended except that all provisions of this Amendment relating to the relocation of the Leased Premises shall thereupon be rendered null and void and of no force or effect and neither party shall have any liability to the other arising out of the anticipated relocation of the Leased Premises. If and when Landlord satisfies all the contingencies of the Redevelopment Plan, then Landlord shall give notice to Tenant and the date of such notice shall be referred to hereinafter as the "Redevelopment Plan Approval Date". Landlord specifically disclaims any warranty or representation that the Redevelopment Plan will be approved, that the Shopping Center will be redeveloped in any way or that the "Relocated Premises" (as defined in Section 3 below) will be constructed or that the Leased Premises will be relocated as set forth in this Amendment. No action taken by Tenant in anticipation of the Redevelopment Plan shall support any action based upon detrimental reliance, promissory estoppel or form a basis for any other legal action based upon the Redevelopment Plan or the relocation of the Leased Premises.

4.

Provided that the Redevelopment Plan Approval Date shall have occurred, Exhibit "A" dated May 21, 2004, attached to this Amendment and made a part hereof for all purposes shall amend and replace the Exhibit "A" dated June 8, 1999 attached to the Lease. As of the "Tender Date" (as hereinafter defined) any reference in the Lease to Exhibit "A" shall mean the Exhibit "A" attached hereto.

5.

Provided that the Redevelopment Plan Approval Date shall have occurred, Landlord shall, at Landlord's sole cost and expense, construct a new Leased Premises ("Relocated Premises") in the location shown on the Exhibit "A" attached hereto, and shall tender possession thereof to Tenant in accordance with the

Construction Rider attached hereto and made a part hereof. The Relocated Premises shall contain approximately 11,637 square feet of floor area located and situated substantially as shown on the Exhibit "A" attached hereto. Within ninety (90) days after tender of possession of the Relocated Premises to Tenant, Tenant shall have the right to measure same and to verify the square footage. In the event the square footage of the Relocated Premises shall be more or less than 11,637 square feet (measured to the outer face of exterior walls) then the Minimum Rent set forth in Section 8 below, and any other charges under the Lease based upon the size of the Leased Premises, shall be adjusted based upon the new square footage; provided, however, that in no event shall the Relocated Premises be deemed to contain more than 11,887 square feet.

In the event that Tenant's fixtures and equipment for the Relocated Premises shall arrive at the site prior to the date Landlord completes Landlord's Work and tenders possession of the Relocated Premises to Tenant, if the Relocated Premises are secure and weather tight and such storage will not interfere with completion of Landlord's Work, Landlord shall allow Tenant to store the fixtures and equipment within the Relocated Premises (without such storage being considered tender of possession) while Landlord completes Landlord's Work. In the event that storage within the Relocated Premises is not appropriate, either because such storage would interfere with completion of Landlord's Work or because the Relocated Premises is not secure or weather tight, then Landlord will provide an alternate space within the Shopping Center for the temporary storage of Tenant's fixtures and equipment. Tenant shall not be required to pay to Landlord any rent or other sum for the cost of storage nor will the space used for storage affect Tenant's share of any costs which are based upon the size of the premises occupied by Tenant. Tenant shall be responsible for insuring the fixtures and equipment and will provide any necessary security while the same are in storage, Landlord being responsible solely for making the storage space available to Tenant as an accommodation.

6.

For purposes of this Amendment, the "Relocation Date" shall be the earlier to occur of: (i) the date upon which Tenant opens for business to the general public in the Relocated Premises; or (ii) Seventy-five (75) days after the date Landlord tenders possession of the Relocated Premises ("Tender Date") to Tenant with all "Landlord's Work" (as defined in the Construction Rider attached hereto) substantially complete. Landlord shall give Tenant not less than Seventy-five (75) days notice prior to the anticipated tender of possession of the Relocated Premises. From and after the Relocation Date, any reference in the Lease to the Leased Premises shall mean the Relocated Premises and any reference to the floor area of the Leased Premises shall mean 11,637 square feet, subject to the remeasurement rights set forth in Section 5 above.

7.

Commencing upon the Relocation Date the Lease Term shall be extended through the last day of the one hundred twentieth (120<sup>th</sup>) full calendar month after the Relocation Date.

8.

Commencing on the Relocation Date, Tenant shall pay as Minimum Rent in accordance with the terms and conditions of Section 4.01 of the Lease, in lieu of the amount presently set forth in Section 4.01 of the Lease, the following:

For the period commencing upon the Relocation Date and continuing through the sixtieth (60<sup>th</sup>) full calendar month immediately following the Relocation Date, including any partial month following the Relocation Date, Eleven Thousand Six Hundred Thirty-Seven and No/100 Dollars (\$11,637.00) per month based upon a rental rate of Twelve and 00/100 Dollars (\$12.00) per square foot of floor area not to exceed 11,887 square feet.

For the period commencing upon the first day of the sixty first (61<sup>st</sup>) full calendar month following the Relocation Date and continuing through the last day of the one hundred twentieth (120<sup>th</sup>) full calendar month following the Relocation Date, Twelve Thousand Eight Hundred and 70/100 Dollars (\$12,800.70) per month based upon a rental rate of Thirteen and 20/100 Dollars (\$13.20) per square foot of floor area not to exceed 11,887 square feet.

9.

Commencing on the Relocation Date, the annual Percentage Rent due from Tenant shall be calculated as follows:

The Percentage Rent "Breakpoint" for each Lease Year shall be an amount equal to the Minimum Rent due and payable for such Lease Year divided by .05. For example, if Tenant's Minimum Rent for a given Lease Year is \$139,644.00, then the Percentage Rent Breakpoint for such Lease Year would be \$2,792,880.00 ( $\$139,644.00 \div .05 = \$2,792,880.00$ ).

Tenant shall pay as Percentage Rent for each Lease Year after the Relocation Date an amount equal to 5% of all Gross Sales between the Breakpoint and \$3,300,000.00 plus 4% of all Gross Sales in excess of \$3,300,000.00.

10.

Tenant shall have the right to continue to use and occupy the Existing Leased Premises according to the terms of the Lease through the Relocation Date. Between the Tender Date and the Relocation Date ("Moveout Period"), Tenant shall cease conducting business in the Existing Leased Premises and commence preparation for the relocation of Tenant's furniture, fixtures, equipment and personal property to the Relocated Premises. During the Moveout Period, Tenant shall vacate the Existing Leased Premises and remove all furniture, fixtures and equipment, and any

personal property therefrom. Tenant acknowledges that Landlord intends to demolish the Existing Leased Premises. Any furniture, fixtures, equipment or other personal property remaining in the Existing Leased Premises seven (7) days after the Relocation Date shall be deemed to have been abandoned by Tenant and Landlord shall have the right to demolish and dispose of same along with the demolition of the Existing Leased Premises without liability or accounting to Tenant. In the event Tenant shall fail to vacate the Existing Leased Premises within seven (7) days after the Relocation Date, then, in addition to the Minimum Rent set forth in Paragraph 8 above, for each day that Tenant holds over beyond the 7<sup>th</sup> day following the Relocation Date Tenant is required to vacate the Existing Leased Premises, Tenant shall pay to Landlord Five Hundred and 00/100 Dollars (\$500.00) per day through the date Tenant tenders possession of the Existing Leased Premises to Landlord. Further, Landlord shall have the right at any time seven (7) days after the Relocation Date to seek specific performance of Tenant's obligation to deliver possession of the Existing Leased Premises. The prevailing party in any such action shall be entitled to recover from the non-prevailing party all court costs and legal fees (including costs of appeal and costs for all bonds) arising out of such action. In the event such costs and expenses are not paid to Landlord within thirty (30) days of submission to Tenant of Landlord's itemized statement for same, Landlord may treat such failure to pay as an Event of Default in the payment of Minimum Rent under the Lease and shall be entitled to exercise any remedy available to Landlord for nonpayment of rent.

11.

Effective as of the Redevelopment Plan Approval Date, the Relocation Option Rider, which is attached hereto and made a part hereof for all purposes, shall supercede and replace the "Existing Premises Option Rider" (as defined in Section 13 below).

12.

As of the Relocation Date, the reference in Section 7.01.A of the Lease to an area outlined in "green" shall mean the area outlined in "green" on Exhibit "A" dated May 21, 2004. Landlord agrees not to change the arrangement or layout of the area outlined in "green" on Exhibit "A" nor shall Landlord reduce the number of parking spaces contained within the "green" area below the number contained within such area on the date possession of the Relocated Premises is tendered to Tenant nor shall Landlord change the ingress or egress from such area in a manner that would materially, adversely affect the Relocated Premises or make any change to the Shopping Center that would materially, adversely affect visibility of the Relocated Premises.

13.

As of the Relocation Date, Section 7.03 of the Lease shall be deleted in its entirety and replaced by the following:

"Section 7.03 Tenant will not load or unload any trucks or permit any trucks serving the Leased Premises, whether owned by Tenant or not, to be loaded or unloaded in any

area within the Shopping Center except in the area outside the rear entrance to the Leased Premises."

14.

As of the Relocation Date, the Relocated Premises shall become the Leased Premises.

15.

There is hereby added to the Lease an "Existing Premises Option Rider" which is attached hereto and made a part hereof for all purposes and which shall remain in full force and effect unless and until the Redevelopment Plan Approval Date shall occur whereupon it shall be superceded by the Relocation Option Rider.

16.

Article XXVIII of the Lease is hereby amended such that any notice which may or shall be given under the terms of the Lease shall be addressed to Tenant, at Attn: Monty Standifer, CFO, 2701 E. Plano Parkway, Suite 200, Plano, Texas 75074, with a copy of any default notices being also sent to Chaiken & Chaiken, P.C., One Galleria Tower, 13355 Noel Road/ Suite 1320, Dallas, Texas 75240.

Except as specifically provided to the contrary herein, all the rest and remaining terms and conditions of the Lease shall remain in full force and effect. All defined terms used herein shall have the same meaning as when used in the Lease unless another meaning is clearly indicated. Landlord and Tenant hereby acknowledge that Buffet Partners, L.P. is the current "Tenant" under the Lease.

This Amendment may be executed in several counterparts, separate signature pages, and/or by facsimile, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Amendment.

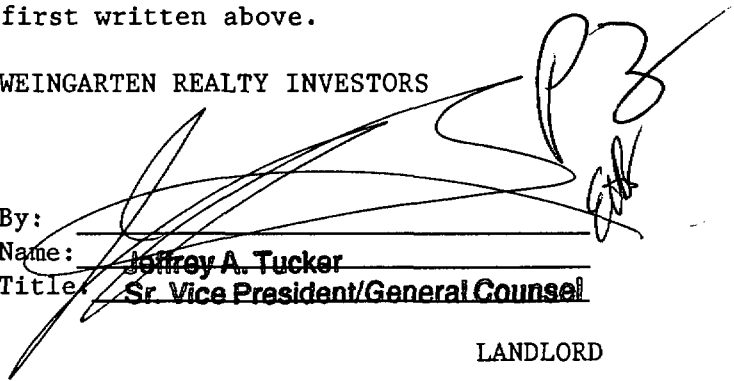
Weingarten Realty Investors (the "trust") is an unincorporated trust organized under the Texas Real Estate Investment Trust Act. Neither the shareholders of the trust, nor its trust managers, officers, employees or other agents are personally, corporately or individually liable for any debt, act, omission or obligation of the trust, and all persons having claims of any kind against the trust must look solely to the property of the trust for the enforcement of their rights.

Landlord warrants and represents that Landlord is the fee simple owner of the entire Shopping Center, including the Relocated Premises, and that the Shopping Center is not subject to any mortgage or deed of trust liens and that Landlord has all requisite right, power and authority to execute this Amendment and perform the transactions contemplated to be performed by Landlord hereunder. Tenant hereby warrants and represents that Tenant has all requisite right, power and authority to execute this Amendment and perform the transactions contemplated to be performed by Tenant hereunder.

THE SUBMISSION OF THIS DOCUMENT FOR EXAMINATION AND/OR EXECUTION HEREOF SHALL BECOME EFFECTIVE ONLY UPON EXECUTION BY ALL PARTIES HERETO AND DELIVERY OF A FULLY EXECUTED COUNTERPART BY LANDLORD TO THE OTHER PARTIES HERETO.

EXECUTED in multiple counterparts, each of which shall have the force and effect of an original on the day and year first written above.

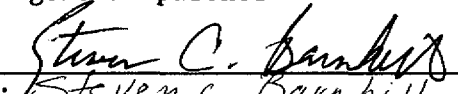
WEINGARTEN REALTY INVESTORS

By:   
Name: Jeffrey A. Tucker  
Title: Sr. Vice President/General Counsel

LANDLORD

BUFFET PARTNERS, L.P.

By: Buffet G.P., Inc,  
general partner

By:   
Name: Steven C. Bankhill  
Title: President



12/17/04

GBP-TK

CONSTRUCTION RIDER

This Construction Rider is attached to and forms a part of that certain First Amendment to Lease (the "First Amendment") dated January 21, 2005, between WEINGARTEN REALTY INVESTORS, as "Landlord" and BUFFET PARTNERS, L.P., as "Tenant".

The Relocated Premises and the Common Area serving the Relocated Premises (including, parking and landscape areas) will be erected by Landlord substantially in accordance with the plans and specifications mutually agreed upon between Landlord and Tenant ("Landlord's Work"). The Relocated Premises shall be based upon the "Furr's Family Buffet-Freestanding Prototype" for ~~McAllen, Texas~~ <sup>SOB</sup> specifications for which are attached to this Construction Rider and made a part hereof for all purposes. Tenant shall be responsible only for providing and installing Tenant's equipment, furniture, fixtures, and inventory. Landlord shall not make substantial changes to Landlord's Work without Tenant's approval, which approval may be granted or withheld in Tenant's sole and absolute discretion. Landlord shall not make non-material changes to Landlord's Work without the prior written consent of Tenant, which consent shall not be unreasonably withheld.

In the event a building permit is not issued to Landlord on the basis of the "Furr's Family Buffet-Freestanding Prototype" for ~~McAllen, Texas~~ <sup>SOB</sup> Landlord and Tenant will attempt to make mutually agreeable revisions to Landlord's Work to enable Landlord to obtain a building permit. Although neither Landlord nor Tenant shall be obligated to approve any such revisions each agrees not to unreasonably withhold consent to any change necessary to obtain a building permit.

If the Redevelopment Plan Approval Date shall have occurred, the improvements on the Relocated Premises will be erected by Landlord substantially in accordance with Landlord's Work. Landlord agrees that such construction of the Relocated Premises will be completed on or before two hundred seventy (270) days after Landlord obtains commences construction of the Relocated Premises unless Landlord's failure so to complete is caused by governmental restrictions, strikes, lockouts, shortages of labor or material, Acts of God, war, terrorist act or civil commotion, fire, unavoidable casualty, inclement weather or any cause beyond the reasonable control of Landlord (any one or more of the aforesaid reasons for Landlord's failure so to complete being herein referred to as "excusable delays"), in which event Landlord shall have a period of time equal to the total of all excusable delays in addition to the time specified above in which to complete such construction as aforesaid.

Landlord agrees at Landlord's expense, to perform Landlord's Work in a good and workmanlike manner and to utilize first quality new materials in compliance with all applicable laws, ordinances, rules and statutes. Upon completion of Landlord's Work, Landlord will tender possession of the Relocated Premises to Tenant. Landlord's Work shall be deemed to have been completed substantially, notwithstanding that adjustments may be required to be made by Landlord in

INITIAL  
SOB

Landlord's Work and that minor punch list items have not been fully completed, so long as Tenant is able lawfully to use the Relocated Premises and obtain a final unconditional certificate of occupancy upon the installation of Tenant's furniture, fixtures and equipment. Landlord warrants that upon completion of Landlord's Work the utilities, including, without limitation, the HVAC, and the interior and exterior of the Relocated Premises will meet with all laws, codes, regulations and ordinances in effect at the time the Relocated Premises is delivered by Landlord to Tenant.

Tenant shall have a period of thirty (30) days from the date Landlord tenders possession of the Relocated Premises to provide Landlord with a list of any defects, incomplete or unsatisfactory items (the "Punch List") with respect to Landlord's Work. Landlord shall be obligated within a reasonable amount of time not to exceed thirty (30) days to complete the Punch List. Landlord warrants and guarantees Landlord's Work to have been accomplished in a first class manner with good workmanship and materials for a period of twelve (12) months from the date possession of the Relocated Premises is delivered to Tenant. After expiration of said twelve (12) month warranty period, Landlord shall assign to Tenant any and all warranties and guaranties of third parties held by Landlord with respect to items which Tenant is required to repair and/or maintain under the Lease, except in the event same are unassignable, Landlord shall enforce same for the benefit of Tenant.

EXISTING PREMISES OPTION RIDER

This Existing Premises Relocation Option Rider is attached to and forms a part of that certain First Amendment to Lease dated January 21, 2005, between WEINGARTEN REALTY INVESTORS as "Landlord," and BUFFET PARTNERS, L.P., as "Tenant."

Contingent upon Tenant satisfying all of the following conditions, Tenant is hereby granted an option to extend the Lease Term, as extended in this First Amendment to Lease (the "Primary Term") for two (2) additional periods of sixty (60) full calendar months each (the "1<sup>st</sup> Extension Term" and "2<sup>nd</sup> Extension Term"), said conditions being that:

- (i) Tenant shall not be in default past the expiration of the applicable notice and cure period of its covenants, duties and obligations under the Lease at the time Tenant exercises its option to extend the Lease, or at the commencement of the applicable Extension Term;
- (ii) Tenant shall be open for business in the Premises and shall not have vacated or abandoned the Premises; and
- (iii) Tenant shall have given notice to Landlord not less than one hundred eighty (180) days prior to the expiration of the Primary Term of Tenant's exercise of the option for the 1<sup>st</sup> Extension Term;

Tenant shall have given notice to Landlord not less than one hundred eighty (180) days prior to the expiration of the 1<sup>st</sup> Extension Term of Tenant's exercise of the option for the 2<sup>nd</sup> Extension Term.

Time is of the essence in the exercise of these options and should Tenant fail to exercise said options by timely notice, said options shall lapse and be of no further force or effect.

Tenant further acknowledges that a failure to properly exercise the option for the 1<sup>st</sup> Extension Term as provided hereinabove, shall render Tenant's option for the 2<sup>nd</sup> Extension Term null and void and without further force and effect.

In the event that Tenant effectively exercises the option(s) herein granted, then all of the terms and provisions of the Lease Contract as are applicable during the Primary Term shall likewise be applicable during the 1<sup>st</sup> and 2<sup>nd</sup> Extension Terms, except:

- (a) Tenant shall have no further right to renew or extend the lease term after the expiration or other termination of the 2<sup>nd</sup> Extension Term;
- (b) The "Minimum Rent" which shall be due and payable each month during each Extension Term at the same time and place, and in the same manner, as set forth in Section 4 of the Lease Contract (relative to payment of Minimum Rent during the Primary Term), shall be:

For each Lease Year of the 1<sup>st</sup> Extension Term: \$12,542.20 per month; and

For each Lease Year of the 2<sup>nd</sup> Extension Term: \$13,796.42 per month;

INITIAL
TENANT
<i>Seb</i>
LANDLORD

(c) The Breakpoint for purposes of calculating Tenant's Percentage Rent for each Lease Year of the Extension Term shall be an amount equal to the Minimum Rent due and payable for such Lease Year divided by .05. For example, if Tenant's Minimum Rent for a given Lease Year is \$150,290.04, then the Percentage Rent Breakpoint for such Lease Year would be \$3,005,808.00 ( $\$150,290.04 \div .05 = \$3,005,808.00$ ).

References in this Rider and the Lease Contract to the "term" or the "lease term" shall be understood to refer to both the Primary Term and (if Tenant's option(s) therefor are effectively exercised in accordance with the provisions hereof) also the hereinabove stated Extension Term(s) unless such interpretation is expressly negated.

L:\Legal\Leasing\AMEND\Buffet Partners.0179\New Optionv1.doc

RELOCATION OPTION RIDER

This Relocation Option Rider is attached to and forms a part of that certain First Amendment to Lease dated January 21, 2006, between WEINGARTEN REALTY INVESTORS as "Landlord," and BUFFET PARTNERS, L.P., as "Tenant."

Contingent upon Tenant satisfying all of the following conditions, Tenant is hereby granted an option to extend the Lease Term, as extended in this First Amendment to Lease (the "Primary Term") for two (2) additional periods of sixty (60) full calendar months each (the "1<sup>st</sup> Extension Term" and "2<sup>nd</sup> Extension Term"), said conditions being that:

- (i) Tenant shall not be in default past the expiration of the applicable notice and cure period of its covenants, duties and obligations under the Lease at the time Tenant exercises its option to extend the Lease, or at the commencement of the applicable Extension Term;
- (ii) Tenant shall be open for business in the Premises and shall not have vacated or abandoned the Premises; and
- (iii) Tenant shall have given notice to Landlord not less than one hundred eighty (180) days prior to the expiration of the Primary Term of Tenant's exercise of the option for the 1<sup>st</sup> Extension Term;

Tenant shall have given notice to Landlord not less than one hundred eighty (180) days prior to the expiration of the 1<sup>st</sup> Extension Term of Tenant's exercise of the option for the 2<sup>nd</sup> Extension Term.

Time is of the essence in the exercise of these options and should Tenant fail to exercise said options by timely notice, said options shall lapse and be of no further force or effect.

Tenant further acknowledges that a failure to properly exercise the option for the 1<sup>st</sup> Extension Term as provided hereinabove, shall render Tenant's option for the 2<sup>nd</sup> Extension Term null and void and without further force and effect.

In the event that Tenant effectively exercises the option(s) herein granted, then all of the terms and provisions of the Lease Contract as are applicable during the Primary Term shall likewise be applicable during the 1<sup>st</sup> and 2<sup>nd</sup> Extension Terms, except:

- (a) Tenant shall have no further right to renew or extend the lease term after the expiration or other termination of the 2<sup>nd</sup> Extension Term;
- (b) The "Minimum Rent" which shall be due and payable each month during each Extension Term at the same time and place, and in the same manner, as set forth in Section 4 of the Lease Contract (relative to payment of Minimum Rent during the Primary Term), shall be:

For each Lease Year of the 1<sup>st</sup> Extension Term: \$14,080.77 per month based upon a rental rate of Fourteen and 52/100 Dollars (\$14.52) per square foot of floor area not to exceed 11,887 square feet; and

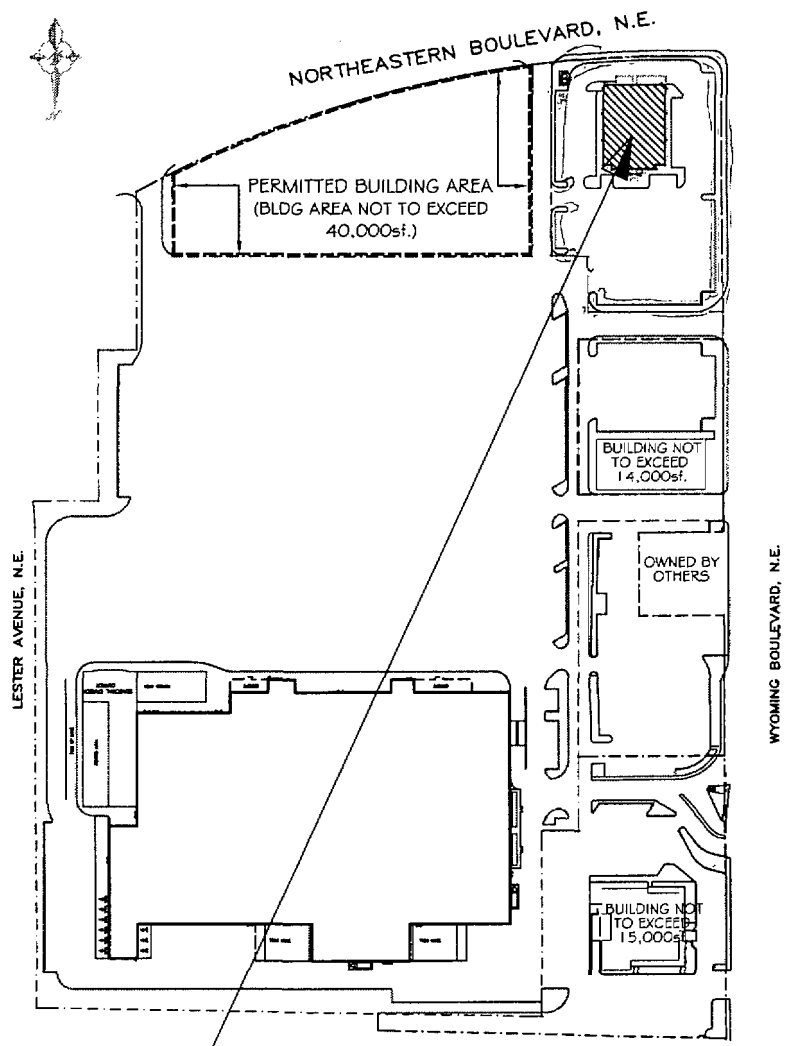
INITIAL
TENANT
<i>Seb</i>
LANDLORD
<i>[Signature]</i>

For each Lease Year of the 2<sup>nd</sup> Extension Term: \$15,486.91 per month based upon a rental rate of Fifteen and 97/100 Dollars (\$15.97) per square foot of floor area not to exceed 11,887 square feet;

(c) The Breakpoint for purposes of calculating Tenant's Percentage Rent for each Lease Year of the Extension Term shall be determined in accordance with the provisions of the First Amendment to Lease.

References in this Rider and the Lease Contract to the "term" or the "lease term" shall be understood to refer to both the Primary Term and (if Tenant's option(s) therefor are effectively exercised in accordance with the provisions hereof) also the hereinabove stated Extension Term(s) unless such interpretation is expressly negated.

L:\Legal\Leasing\AMEND\Buffet Partners.0179\OPTION2.doc



"Leased Premises"  
 Approx: 11,637sf.  
 Address: T.B.D.  
 Albuquerque, New Mexico

The "Leased Premises" as shown hereon is for BUFFET PARTNERS, LP  
 Subject to the terms of the Lease, any future construction by the Landlord within the Shopping Center will not affect the validity of the Lease covering the Leased Premises. Subject to the terms of the Lease, Landlord may elect to change the location, size, layout, or other details of any buildings, or Common Area in the Shopping Center and/or to construct other buildings in the Shopping Center and such changes will not affect the validity of the Lease covering the Leased Premises.

The post office address designated hereon, if any, is subject to change at any time.

DATE: 05-21-2004  
 REV.:

EXHIBIT "A"  
 WYOMING MALL

INITIAL  
 SCB

Floor No:  
T.B.D.  
 Unit No:  
T.B.D.  
 Project No:  
0179

Revision	Description
1	Issue for Permit
2	Issue for Construction
3	Issue for Construction
4	Issue for Construction
5	Issue for Construction
6	Issue for Construction
7	Issue for Construction
8	Issue for Construction
9	Issue for Construction
10	Issue for Construction

Project # **041646.007**  
 Permit # \_\_\_\_\_

**Furr's Family Buffet - Free-standing Prototype**  
**Wyandling Boulevard & Northwestern Boulevard**  
**Albuquerque, New Mexico**



**GHA**  
 ASSOCIATES, INC.  
 1000 University Blvd, NE  
 Albuquerque, NM 87102  
 Phone: (505) 242-7777  
 Fax: (505) 242-7778



**01.14.05**

**PERMIT SET**

**Furr's Family Buffet - Free-standing Prototype**  
**Wyandling Boulevard & Northwestern Boulevard**  
**Albuquerque, New Mexico 87102**

**Abbreviations**

B	Beam	C	Column
CL	Centerline	D	Door
CL	Centerline	E	Elevation
CL	Centerline	F	Footing
CL	Centerline	G	Grade
CL	Centerline	H	Header
CL	Centerline	I	Interior
CL	Centerline	J	Joint
CL	Centerline	K	Kitchen
CL	Centerline	L	Level
CL	Centerline	M	Mechanical
CL	Centerline	N	North
CL	Centerline	O	Opening
CL	Centerline	P	Panel
CL	Centerline	Q	Quantity
CL	Centerline	R	Room
CL	Centerline	S	Stair
CL	Centerline	T	Top
CL	Centerline	U	Under
CL	Centerline	V	Vertical
CL	Centerline	W	Window
CL	Centerline	X	Extend
CL	Centerline	Y	Yield
CL	Centerline	Z	Zone

**Project General Notes**

1. ALL WORK SHALL BE PERFORMED IN ACCORDANCE WITH THE CITY OF ALBUQUERQUE, NEW MEXICO, AND THE STATE OF NEW MEXICO, AND ANY APPLICABLE ORDINANCES, RULES AND REGULATIONS.  
 2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF ALBUQUERQUE, NEW MEXICO, AND THE STATE OF NEW MEXICO, AND ANY APPLICABLE AGENCIES.  
 3. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AND UTILITIES AT ALL TIMES.  
 4. THE CONTRACTOR SHALL PROTECT ALL EXISTING UTILITIES AND STRUCTURES ON THE SITE.  
 5. THE CONTRACTOR SHALL MAINTAIN ADEQUATE SAFETY BARRIERS AND WARNING SIGNS AT ALL TIMES.  
 6. THE CONTRACTOR SHALL MAINTAIN RECORDING OF ALL WORK PERFORMED.  
 7. THE CONTRACTOR SHALL MAINTAIN ADEQUATE RECORDS OF ALL WORK PERFORMED.  
 8. THE CONTRACTOR SHALL MAINTAIN ADEQUATE RECORDS OF ALL WORK PERFORMED.  
 9. THE CONTRACTOR SHALL MAINTAIN ADEQUATE RECORDS OF ALL WORK PERFORMED.  
 10. THE CONTRACTOR SHALL MAINTAIN ADEQUATE RECORDS OF ALL WORK PERFORMED.

**Occupancy Compliance**

1. ALL OCCUPANCY REQUIREMENTS SHALL BE IN ACCORDANCE WITH THE CITY OF ALBUQUERQUE, NEW MEXICO, AND THE STATE OF NEW MEXICO, AND ANY APPLICABLE ORDINANCES, RULES AND REGULATIONS.  
 2. THE CONTRACTOR SHALL MAINTAIN ADEQUATE RECORDS OF ALL WORK PERFORMED.  
 3. THE CONTRACTOR SHALL MAINTAIN ADEQUATE RECORDS OF ALL WORK PERFORMED.

**Trobel Beam ADA Compliance**

1. ALL TROBEL BEAM ADA COMPLIANCE REQUIREMENTS SHALL BE IN ACCORDANCE WITH THE CITY OF ALBUQUERQUE, NEW MEXICO, AND THE STATE OF NEW MEXICO, AND ANY APPLICABLE ORDINANCES, RULES AND REGULATIONS.  
 2. THE CONTRACTOR SHALL MAINTAIN ADEQUATE RECORDS OF ALL WORK PERFORMED.  
 3. THE CONTRACTOR SHALL MAINTAIN ADEQUATE RECORDS OF ALL WORK PERFORMED.

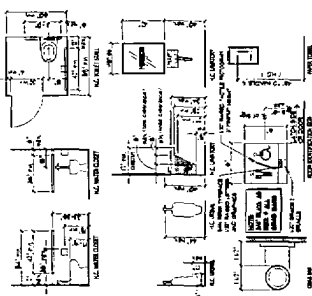
**Contact Information**

**OWNER:**  
 FURR'S FAMILY BUFFET  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**PROJECT ARCHITECT:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**MEP ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**STRUCTURAL ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778



**Index of Drawings**

No.	Description
01	Cover Sheet
02	MEP Notes
03	Structural Notes
04	Interior Notes
05	Exterior Notes
06	Foundation Notes
07	Roof Notes
08	Plumbing Notes
09	Electrical Notes
10	Mechanical Notes
11	Foundation Plan
12	Roof Plan
13	Plumbing Plan
14	Electrical Plan
15	Mechanical Plan
16	Interior Elevation
17	Exterior Elevation
18	Foundation Elevation
19	Roof Elevation
20	Plumbing Elevation
21	Electrical Elevation
22	Mechanical Elevation

**Index of Drawings**

No.	Description
23	Foundation Plan
24	Roof Plan
25	Plumbing Plan
26	Electrical Plan
27	Mechanical Plan
28	Interior Elevation
29	Exterior Elevation
30	Foundation Elevation
31	Roof Elevation
32	Plumbing Elevation
33	Electrical Elevation
34	Mechanical Elevation
35	Foundation Plan
36	Roof Plan
37	Plumbing Plan
38	Electrical Plan
39	Mechanical Plan
40	Interior Elevation
41	Exterior Elevation
42	Foundation Elevation
43	Roof Elevation
44	Plumbing Elevation
45	Electrical Elevation
46	Mechanical Elevation

**KITCHEN DESIGNERS/EQUIPMENT SUPPLIERS:**  
 FURR'S FAMILY BUFFET  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**CIVIL ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**MEP ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**STRUCTURAL ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**PROJECT ARCHITECT:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**OWNER:**  
 FURR'S FAMILY BUFFET  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**PROJECT ARCHITECT:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**MEP ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**STRUCTURAL ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**KITCHEN DESIGNERS/EQUIPMENT SUPPLIERS:**  
 FURR'S FAMILY BUFFET  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**CIVIL ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**MEP ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**STRUCTURAL ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**KITCHEN DESIGNERS/EQUIPMENT SUPPLIERS:**  
 FURR'S FAMILY BUFFET  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**CIVIL ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**MEP ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**STRUCTURAL ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**KITCHEN DESIGNERS/EQUIPMENT SUPPLIERS:**  
 FURR'S FAMILY BUFFET  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**CIVIL ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**MEP ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**STRUCTURAL ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**KITCHEN DESIGNERS/EQUIPMENT SUPPLIERS:**  
 FURR'S FAMILY BUFFET  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**CIVIL ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**MEP ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**STRUCTURAL ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**KITCHEN DESIGNERS/EQUIPMENT SUPPLIERS:**  
 FURR'S FAMILY BUFFET  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**CIVIL ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**MEP ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**STRUCTURAL ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**KITCHEN DESIGNERS/EQUIPMENT SUPPLIERS:**  
 FURR'S FAMILY BUFFET  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**CIVIL ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**MEP ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**STRUCTURAL ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**KITCHEN DESIGNERS/EQUIPMENT SUPPLIERS:**  
 FURR'S FAMILY BUFFET  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**CIVIL ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**MEP ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**STRUCTURAL ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**KITCHEN DESIGNERS/EQUIPMENT SUPPLIERS:**  
 FURR'S FAMILY BUFFET  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**CIVIL ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**MEP ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**STRUCTURAL ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**KITCHEN DESIGNERS/EQUIPMENT SUPPLIERS:**  
 FURR'S FAMILY BUFFET  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**CIVIL ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**MEP ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**STRUCTURAL ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**KITCHEN DESIGNERS/EQUIPMENT SUPPLIERS:**  
 FURR'S FAMILY BUFFET  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**CIVIL ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**MEP ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**STRUCTURAL ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**KITCHEN DESIGNERS/EQUIPMENT SUPPLIERS:**  
 FURR'S FAMILY BUFFET  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**CIVIL ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**MEP ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**STRUCTURAL ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**KITCHEN DESIGNERS/EQUIPMENT SUPPLIERS:**  
 FURR'S FAMILY BUFFET  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**CIVIL ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**MEP ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**STRUCTURAL ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**KITCHEN DESIGNERS/EQUIPMENT SUPPLIERS:**  
 FURR'S FAMILY BUFFET  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**CIVIL ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**MEP ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE  
 ALBUQUERQUE, NM 87102  
 PHONE: (505) 242-7777  
 FAX: (505) 242-7778

**STRUCTURAL ENGINEERS:**  
 GHA ASSOCIATES, INC.  
 1000 UNIVERSITY BLVD, NE



## **EXHIBIT B-3**

TF/EHB/tje  
06/16/05  
07/12/05

P0179 LBUFFPL01  
AMD

CF

SECOND AMENDMENT TO LEASE

This SECOND AMENDMENT TO LEASE is made and entered into this 22nd day of July, 2005, by and between WEINGARTEN REALTY INVESTORS, ("Landlord"), and BUFFET PARTNERS, L.P., ("Tenant").

WITNESSETH

WHEREAS, Landlord and Cafeteria Operators, L.P. entered into that certain Land Lease Contract dated June 23, 1999, for a certain premises consisting of approximately 11,402 square feet of space located in Landlord's Wyoming Mall, known by street address as 2230 Wyoming Blvd., NE, Albuquerque, New Mexico; and

WHEREAS, by Order Confirming Amended Joint Plan of Reorganization for the Debtors, as Amended dated September 17, 2003, the Lease was assigned by Cafeteria Operators, L.P. to and assumed by Tenant; and

WHEREAS, the Lease Contract has previously been amended by a First Amendment to Lease dated January 21, 2005 (said Lease Contract together with said First Amendment to Lease being hereinafter referred to jointly as "**Lease**"); and

WHEREAS, Landlord and Tenant desire further to amend said Lease as hereinafter set forth;

NOW, THEREFORE, in consideration of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual covenants contained herein, the parties hereby agree as follows:

1.

Provided that the Redevelopment Plan Approval Date shall have occurred, Exhibit "A" dated May 21, 2004, attached to the Lease is hereby deleted in its entirety and replaced by the Exhibit "A" which is attached hereto and made a part hereof all purposes. From and after the Redevelopment Plan Approval Date, any reference in the Lease to Exhibit "A" shall mean the Exhibit "A" attached hereto.

2.

Any provision of the Lease to the contrary notwithstanding, the parking area as shown on Parcel "5-A" on Exhibit "A" shall be constructed and striped as indicated. Landlord agrees not to change the arrangement or layout of the common areas located on Parcel "5-A", nor shall Landlord reduce the number of parking spaces located upon Parcel "5-A" below the number contained thereupon on the date possession of the Relocated Premises is tendered to Tenant, nor shall Landlord change the ingress or egress from Parcel "5-A" in any manner that would

materially, adversely affect the Relocated Premises or make any change to the Shopping Center that would materially, adversely affect visibility of the Relocated Premises. The tract of land labeled Parcel "1-C" on Exhibit "A" may contain not more than ten (10) restricted or limited duration parking spaces. The tract of land labeled Parcel "4-A" on Exhibit "A" may contain not more the five (5) restricted or limited duration parking spaces. The limitations on restricted parking spaces set forth in this Section shall be in addition to any required "Handicapped" parking spaces. On the date Tenant opens for business in the Relocated Premises, the parking areas on Parcel "5-A" and Parcel "4-A" shall be completed, open and available for use by Tenant's customers and invites. The parking area located on Parcel "1-C" may be fenced and unavailable for parking until the occupant of the building to be located on Parcel "1-C" is open for business. Tenant shall have the nonexclusive right to use the area labeled "Furr's Employee Spaces," shown on Exhibit "A-1" attached hereto and made a part hereof for all purposes, as Tenant's employee parking area.

3.

Provided that the Redevelopment Plan Approval Date shall have occurred, Landlord agrees to enter into an Easements with Covenants and Restrictions Affecting Land agreement ("ECR") which shall: (i) establish parking ratios for the Shopping Center; (ii) require cross access and parking among all the parcels of land comprising the Shopping Center; and (iii) provide that the customers and invitees of Tenant shall have the right to park in any available unrestricted parking space located on any other parcel in the Shopping Center and Tenant agrees that the Lease shall be subject and subordinate to the terms of the ECR.

4.

Landlord agrees that the combined ground floor area of all buildings constructed on Parcel "1-C" plus Parcel "1-B," as shown on Exhibit "A," shall not exceed 40,000 square feet of space. Said parcels may contain one or more buildings from time to time so long as the combined ground floor area of all buildings does not exceed the foregoing restrictions.

Except as specifically provided to the contrary herein, all of the rest and remaining terms and conditions of the Lease shall remain in full force and effect.

All defined terms used herein shall have the same meaning as when used in the Lease unless another meaning is clearly indicated.

This Amendment may be executed in several counterparts, separate signature pages, and/or by facsimile, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Amendment.

Weingarten Realty Investors (the "trust") is an unincorporated trust organized under the Texas Real Estate Investment Trust Act. Neither the shareholders of the trust, nor its trust managers, officers, employees or other agents are personally, corporately or individually liable for

any debt, act, omission or obligation of the trust, and all persons having claims of any kind against the trust must look solely to the property of the trust for the enforcement of their rights.


Landlord warrants and represents that Landlord is the fee simple owner of the entire Shopping Center, and that the Shopping Center is not subject to any mortgage or deed of trust liens and that Landlord has all requisite right, power and authority to execute this Amendment and perform the transactions contemplated to be performed by Landlord hereunder.

Tenant hereby warrants and represents that Tenant has all requisite right, power and authority to execute this Amendment and perform the transactions contemplated to be performed by Tenant hereunder.

THE SUBMISSION OF THIS DOCUMENT FOR EXAMINATION AND/OR EXECUTION HEREOF SHALL BECOME EFFECTIVE ONLY UPON EXECUTION BY ALL PARTIES HERETO AND DELIVERY OF A FULLY EXECUTED COUNTERPART BY LANDLORD TO THE OTHER PARTIES HERETO.

EXECUTED in multiple counterparts, each of which shall have the force and effect of an original on the day and year first written above.


WEINGARTEN REALTY INVESTORS

By:   
Name: Stephen C. Richter Title  
Executive VP/CFO




LANDLORD

ATTEST:

  
Secretary

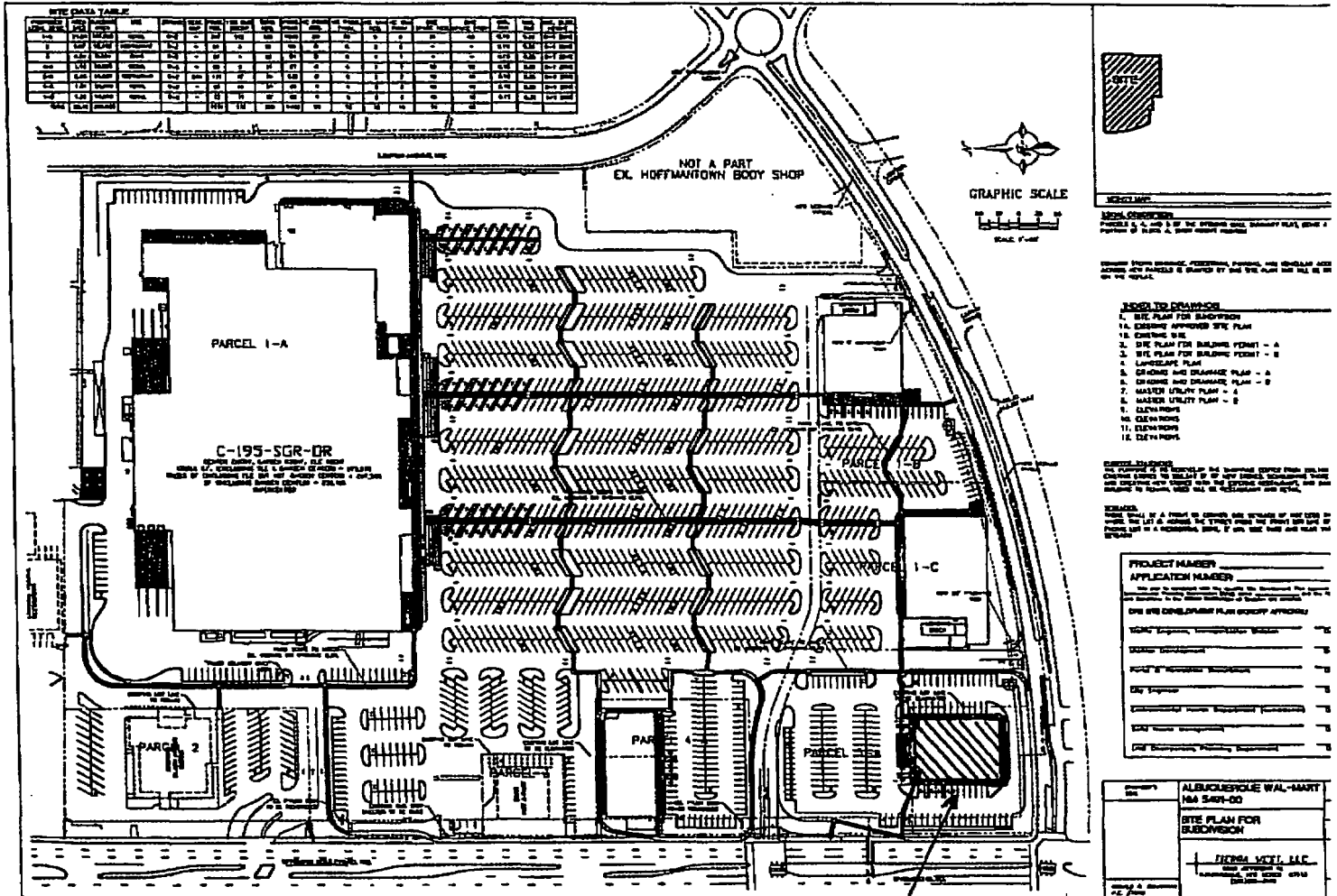
BUFFET PARTNERS, L.P.

By:   
President

TENANT

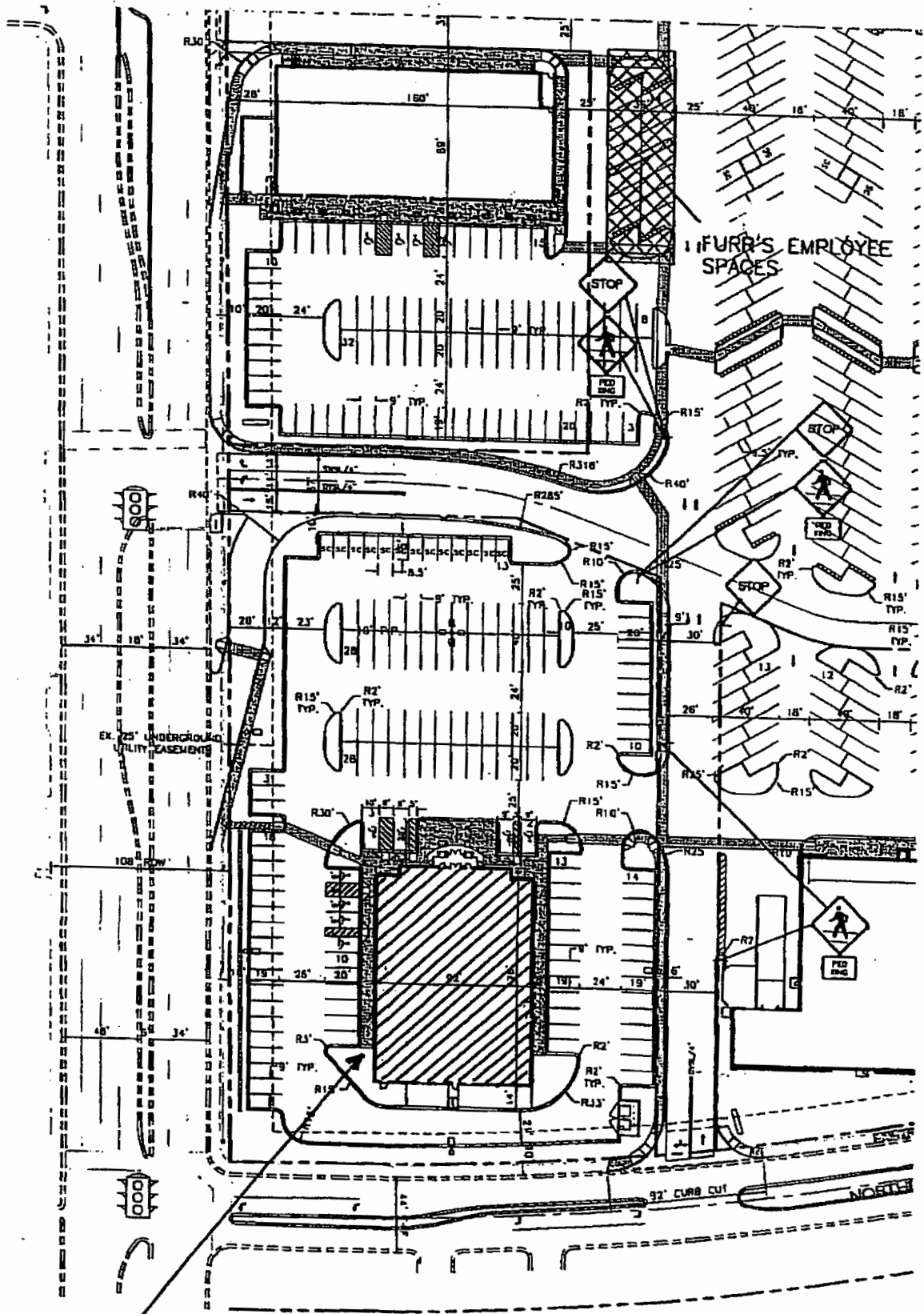
# EXHIBIT "A"

The "Leased Premises" as shown hereon is for BUFFET PARTNERS, LP  
 Subject to the terms of the Lease, any future construction by the Landlord within the Shopping Center will not affect the validity of the Lease covering the Leased Premises. Subject to the terms of the Lease, Landlord may elect to change the location, size, layout, or other details of any buildings, or Common Area in the Shopping Center and/or to construct other buildings in the Shopping Center and such changes will not affect the validity of the Lease covering the Leased Premises.



"Leased Premises"  
 Approx: 11,637sf.  
 Address: T.B.D.  
 Albuquerque, New Mexico

# EXHIBIT "A-1"



"Leased Premises"  
 Approx: 11,637sf.

ON SITE FURR'S PARKING=141 SPACES  
 OFF SITE EMPLOYEE PARKING=14 SPACES  
 TOTAL FURR'S SPACES =155

# **EXHIBIT B-4**



March 10, 2017

Weingarten Realty Investors  
c/o WFC Wyoming NM, LLC  
9301 East Shea Blvd, Suite #124  
Scottsdale, AZ 85260

**VIA CERTIFIED MAIL**  
7014 1820 0001 6488 4008

Re: **RENEWAL NOTICE**

Lease Agreement dated October 17, 2007 by and between Weingarten Realty Investors ("Landlord") and Fresh Acquisitions, L.L.C. ("Tenant") for the premises located at 2004 Wyoming Blvd, Albuquerque, NM 87112 (the "Lease")

Ms. Deanna Ross:

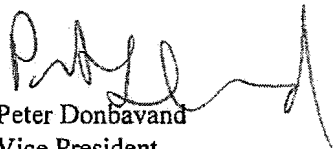
The current term of the Lease is scheduled to expire on October 31, 2017. Pursuant to the Relocation Option Rider attached to and part of the First Amendment dated January 21, 2005, Tenant has the option to renew and extend the term for up to two (2) additional periods of five (5) years each.

**This shall serve as Tenant's written notice to Landlord of Tenant's election to exercise its first option to extend, hereby renewing and extending the Term of the Lease for one (1) additional five (5) year period (commencing November 1, 2017 and expiring October 31, 2022). All terms and conditions of the Lease shall remain in full force and effect except that minimum rent for the third option shall be \$168,969.24 per annum (\$14,080.77 monthly).**

Tenant reserves its rights as to any subsequent extension option available under the terms of the Lease. If you should have any questions, please feel free to call.

Respectively,

FRESH ACQUISITIONS, L.L.C.

  
Peter Donbavand  
Vice President

Although not required as a condition to effectuate Tenant's exercise of the option, we would appreciate you signing below to acknowledge your receipt of this renewal notice for our records. The extended term of the Lease shall commence on November 1, 2017 and expire on October 31, 2022 with the minimum monthly rent at \$14,080.77.

WFC Wyoming NM, L.L.C.

By: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_



# **EXHIBIT C**

# CM Receivables Ledger

Building	Lease	Date	Cat	Description	Src	Description	Debit	Credit	Balance	Receipt Desc	Invoice	Rept Type
7980- 021321	<b>Furr's Fresh Buffett</b>					<b>Melissa Figueroa</b>	(210) 403-3725		<b>Master Occp Id: 000013321-1</b>			
				Balance Forward					0.00			
7980	021321	4/1/2020	BRT	BASE RENT	CH	AUTOCHRG @T4/30/2020	14,080.77		14,080.77			
7980	021321	4/1/2020	CAM	NNN ESTIMATES	CH	AUTOCHRG @T4/30/2020	3,117.00		17,197.77			
7980	021321	4/1/2020	CIN	CAM: INS ESTIMATE	CH	AUTOCHRG @T4/30/2020	161.00		17,358.77			
7980	021321	4/1/2020	CTX	CAM: TAX ESTIMATE	CH	AUTOCHRG @T4/30/2020	1,415.00		18,773.77			
7980	021321	4/6/2020	C12	PRIOR YEAR CAM	NC	2019 Reconciliation		873.02	17,900.75			
7980	021321	5/1/2020	BRT	BASE RENT	CH	AUTOCHRG @T5/31/2020	14,080.77		31,981.52			
7980	021321	5/1/2020	CAM	NNN ESTIMATES	CH	AUTOCHRG @T5/31/2020	3,117.00		35,098.52			
7980	021321	5/1/2020	CIN	CAM: INS ESTIMATE	CH	AUTOCHRG @T5/31/2020	161.00		35,259.52			
7980	021321	5/1/2020	CTX	CAM: TAX ESTIMATE	CH	AUTOCHRG @T5/31/2020	1,415.00		36,674.52			
7980	021321	6/1/2020	BRT	BASE RENT	CH	AUTOCHRG @T6/30/2020	14,080.77		50,755.29			
7980	021321	6/1/2020	CAM	NNN ESTIMATES	CH	AUTOCHRG @T6/30/2020	3,117.00		53,872.29			
7980	021321	6/1/2020	CIN	CAM: INS ESTIMATE	CH	AUTOCHRG @T6/30/2020	161.00		54,033.29			
7980	021321	6/1/2020	CTX	CAM: TAX ESTIMATE	CH	AUTOCHRG @T6/30/2020	1,415.00		55,448.29			
7980	021321	7/1/2020	BRT	BASE RENT	CH	AUTOCHRG @T7/31/2020	14,080.77		69,529.06			
7980	021321	7/1/2020	CAM	NNN ESTIMATES	CH	AUTOCHRG @T7/31/2020	3,117.00		72,646.06			
7980	021321	7/1/2020	CIN	CAM: INS ESTIMATE	CH	AUTOCHRG @T7/31/2020	161.00		72,807.06			
7980	021321	7/1/2020	CTX	CAM: TAX ESTIMATE	CH	AUTOCHRG @T7/31/2020	1,415.00		74,222.06			
7980	021321	8/1/2020	BRT	BASE RENT	CH	AUTOCHRG @T8/31/2020	14,080.77		88,302.83			
7980	021321	8/1/2020	CAM	NNN ESTIMATES	CH	AUTOCHRG @T8/31/2020	3,117.00		91,419.83			
7980	021321	8/1/2020	CIN	CAM: INS ESTIMATE	CH	AUTOCHRG @T8/31/2020	161.00		91,580.83			
7980	021321	8/1/2020	CTX	CAM: TAX ESTIMATE	CH	AUTOCHRG @T8/31/2020	1,415.00		92,995.83			
7980	021321	9/1/2020	BRT	BASE RENT	CH	AUTOCHRG @T9/30/2020	14,080.77		107,076.60			
7980	021321	9/1/2020	CAM	NNN ESTIMATES	CH	AUTOCHRG @T9/30/2020	3,117.00		110,193.60			
7980	021321	9/1/2020	CIN	CAM: INS ESTIMATE	CH	AUTOCHRG @T9/30/2020	161.00		110,354.60			
7980	021321	9/1/2020	CTX	CAM: TAX ESTIMATE	CH	AUTOCHRG @T9/30/2020	1,415.00		111,769.60			
7980	021321	9/28/2020	LGF	LEGAL FEES	CH	Legal Fees	473.90		112,243.50			
7980	021321	10/1/2020	BRT	BASE RENT	CH	AUTOCHRG @T10/31/2020	14,080.77		126,324.27			
7980	021321	10/1/2020	CAM	NNN ESTIMATES	CH	AUTOCHRG @T10/31/2020	3,117.00		129,441.27			
7980	021321	10/1/2020	CIN	CAM: INS ESTIMATE	CH	AUTOCHRG @T10/31/2020	161.00		129,602.27			
7980	021321	10/1/2020	CTX	CAM: TAX ESTIMATE	CH	AUTOCHRG @T10/31/2020	1,415.00		131,017.27			
7980	021321	11/1/2020	BRT	BASE RENT	CH	AUTOCHRG @T11/30/2020	14,080.77		145,098.04			
7980	021321	11/1/2020	CAM	NNN ESTIMATES	CH	AUTOCHRG @T11/30/2020	3,117.00		148,215.04			
7980	021321	11/1/2020	CIN	CAM: INS ESTIMATE	CH	AUTOCHRG @T11/30/2020	161.00		148,376.04			

Wyoming Mall (BLDG: 7980)

Security Deposit Ending Balance Includes all Periods

Occupancy Status: Current Inactive New  
04/20 through 04/21

### CM Receivables Ledger

Building	Lease	Date	Cat	Description	Src	Description	Debit	Credit	Balance	Receipt Desc	Invoice	Rcpt Type
7980	021321	11/1/2020	CTX	CAM:TAX ESTIMATE	CH	AUTOCHRG @T11/30/2020	1,415.00		149,791.04			
7980	021321	12/1/2020	BRT	BASE RENT	CH	AUTOCHRG @T12/31/2020	14,080.77		163,871.81			
7980	021321	12/1/2020	CAM	NNN ESTIMATES	CH	AUTOCHRG @T12/31/2020	3,117.00		166,988.81			
7980	021321	12/1/2020	CIN	CAM: INS ESTIMATE	CH	AUTOCHRG @T12/31/2020	161.00		167,149.81			
7980	021321	12/1/2020	CTX	CAM:TAX ESTIMATE	CH	AUTOCHRG @T12/31/2020	1,415.00		168,564.81			
7980	021321	1/1/2021	BRT	BASE RENT	CH	AUTOCHRG @T1/31/2021	14,080.77		182,645.58			
7980	021321	1/1/2021	CAM	NNN ESTIMATES	CH	AUTOCHRG @T1/31/2021 @R	3,338.00		185,983.58			
7980	021321	1/1/2021	CIN	CAM: INS ESTIMATE	CH	AUTOCHRG @T1/31/2021 @R	267.00		186,250.58			
7980	021321	1/1/2021	CTX	CAM:TAX ESTIMATE	CH	AUTOCHRG @T1/31/2021 @R	1,378.00		187,628.58			
7980	021321	2/1/2021	BRT	BASE RENT	CH	AUTOCHRG @T2/28/2021	14,080.77		201,709.35			
7980	021321	2/1/2021	CAM	NNN ESTIMATES	CH	AUTOCHRG @T2/28/2021	3,338.00		205,047.35			
7980	021321	2/1/2021	CIN	CAM: INS ESTIMATE	CH	AUTOCHRG @T2/28/2021	267.00		205,314.35			
7980	021321	2/1/2021	CTX	CAM:TAX ESTIMATE	CH	AUTOCHRG @T2/28/2021	1,378.00		206,692.35			

# **EXHIBIT D**

## EXHIBIT D

### Fresh Acquisition -- Albuquerque, NM -- Store 115

#### -Projected Lease Balances Following Rejection-

#### CURRENT CHARGES FOR ONE YEAR

			<u>502(b)(6) Caps</u>
Rent	14,080.77 x 12 months =	\$168,969.24	
CAM	3,117.00 x 12 months =	\$37,404.00	
Insurance	161.00 x 12 months =	\$1,932.00	
Taxes	<u>1,415.00</u> x 12 months =	<u>\$16,980.00</u>	
<b>TOTAL</b>	18,773.77	<b>\$225,285.24</b>	<b>\$225,285.24</b>

#### CHARGES THROUGH END OF LEASE

#### Monthly Rent @ \$14,080.77 for 4/20/20 through 10/31/22:

Rent	14,080.77 x 18 months =	\$253,453.86
CAM	3,117.00 x 18 months =	\$56,106.00
Insurance	161.00 x 18 months =	\$2,898.00
Taxes	1,415.00 x 18 months =	\$25,470.00

Prorated Rent & Charges  
for 4/20-4/30/21 6,257.30

**TOTAL** **\$344,185.16**

**TOTAL PROJECTED CHARGES THROUGH  
END OF LEASE:** **\$344,185.16** **\$51,627.77**